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APPENDIX

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JOHN F. DAVIS, CLE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 131

EDGERTON P. DARNESTOWN, JR., CHAIRMAN OF THE MARYLAND STATE BOARD OF PUBLIC WELFARE, ET AL.,

Appellants,

—v.—

LUCILLE WILLIAMS, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

FILED MAY 15, 1965

PROBABLE JURISDICTION NOTED OCTOBER 11, 1965

TABLE OF CONTENTS

	PAGE
Docket Entries	1
Complaint	5
Complaint — Exhibit A	17
Exhibit B[1]	19
Exhibit B[2]	20
Exhibit B[3]	20
Exhibit B[4]	21
Exhibit B[5]	21
Exhibit B[6]	22
Exhibit B[7]	23
Exhibit B[8]	24
Memorandum in Support of Plaintiffs' Motion For A Temporary Restraining Order and A Preliminary Injunction	25
Supplementary Memorandum in Support of Plaintiffs' Motion For A Temporary Restraining Order and A Preliminary Injunction	45
Amended Motion To Dismiss	55
Memorandum or Law in Support of Defendants' Amended Motion to Dismiss	56
Answer	70
Stipulation of Facts	71
Stipulation — Exhibit 1	75
Exhibit 2	75
Proceedings in Open Court, June 24, 1968	76
Proceedings in Open Court, June 25, 1968	83
Initial Opinion	87
Motion to Amend Findings of Fact and Judgment or in the Alternative to take Additional Testimony, or for A New Trial, or in the Alternative to Alter or Amend the Judgment	100

PAGE

Exhibit to Defendants' Memorandum in Support of Motion to Amend Findings of Fact and Judgment or in the Alternative to Take Additional Testimony, or for a New Trial, or in the Alternative to Alter or Amend the Judgment—

Exhibit A (Excerpts from) 100

Exhibit B 114

Exhibit J to Exhibit B 116

Exhibit K to Exhibit B 119

Exhibit C 120

Exhibit D 126

Exhibit E (Excerpts from) 127

Exhibit F 147

Exhibit A to Exhibit F 163

Exhibit G 165

Exhibit H 183

Exhibit I 194

Proceedings in Open Court, January 3, 1969 195

Exhibits to Memorandum of Plaintiffs in Opposition to Defendants' Motion—

Exhibit A^1 (Excerpts from) 203

Exhibit A^2 (Excerpts from) 204

Exhibit B^1 206

Exhibit B^2 (Excerpts from) 208

Exhibit E^1 208

Exhibit E^2 209

Stipulation of Facts 213

Supplemental Memorandum of Defendants in Support of Motion for Reargument 214

PAGE

Attachments to Supplemental Memorandum of Defendants in Support of Motion for Reargument—ment—

Excerpts from:

Cohen, *Factors Influencing the Content of Federal Public Welfare Legislation* 216

Cohen & Ball, *The Public Welfare Amendments of 1962* 218

Hearings before the Committee on Ways and Means 219

Supplemental Opinion on Motion 238

Order 257

DOCKET ENTRIES

United States District Court for the District of Maryland

1968

Feb. 28—Complaint, request for a Three-Judge Court and Exhibits A, and B-1 through B-8, inclusive, filed.

Feb. 28—(Issuance of process withheld — see letter on file).

Feb. 28—Points and Authorities in support of Application for a Three-Judge Court, filed.

Feb. 28—Motion of Plaintiff, Linda Williams, and her minor children, Affidavit and Order (Thomsen, C. J.) granting leave to file in forma pauperis, filed.

Feb. 28—Motion of Plaintiffs, Junius Gary and Jeanette Gary, and their minor children, Affidavit and Order (Thomsen, C. J.) granting leave to file in forma pauperis, filed.

Feb. 28—Motion of Plaintiff, Linda Williams and her minor children, for temporary restraining order and preliminary injunction and Affidavit in support thereof, filed.

Feb. 28—Motion of Plaintiffs, Junius Gary and Jeanette Gary, and their minor children, for temporary restraining order and preliminary injunction and affidavits (2) in support thereof, filed.

March 1—Request of Plaintiff to issue summons as to Defendant, Esther Lazarus, filed.

March 1—Summons issued as to Defendant, Esther Lazarus. (Summoned — 4 March 1968).

March 1—Notification and Request of the Court (Thomsen, C. J.) for designation for Three Judge Court, filed.

March 18—Designation of Haynsworth, C. J., Fourth Cir., of Three-Judge District Court, designating Winter, Cir., J., and Thomsen and Harvey, JJ., filed.

March 21—Answer of Defendant, Esther Lazarus, Director of Public Works, etc., filed.

March 21—Motion of Defendants, Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester S. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles D. Harris, members of the State Board of Public Welfare, to Dismiss, and Memorandum in Support thereof, filed.

March 21—Answer of Defendants, Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester S. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles B. Harris, members of the State Board of Public Welfare, filed.

March 25—Amended Answer of Defendant, Esther Lazarus, Director of Public Works, etc., filed.

April 1—Memorandum of Plaintiffs in opposition to Defendants' Motion to Dismiss, filed.

June 7—Memorandum of Plaintiffs in support of Motion for Temporary Restraining Order and Preliminary Injunction, filed.

June 21—Amended Motion of Defendants to Dismiss, and Memorandum in support thereof, filed.

June 24—Hearing on Motion of Defendants to dismiss and to abstain, before the Court, Winter, Circuit J., Thomsen, C. J. and Harvey, J.

June 24—Argued and held sub-curia.

June 25—Stipulation of counsel re Statement of Facts, filed.

June 25—Oral opinion of the Court rendered.

June 26—Order (Winter, Cir. J., Thomsen, C. J., and Harvey, J.) denying Amended motion to dismiss, filed.

July 16—Supplementary Memorandum, Attachment and Amended Affidavits (3) in support of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, filed.

Aug. 6—Appearance of Sheldon London, Esquire, as co-counsel for Defendant Esther Lazarus, Director of Public Welfare for the City of Baltimore, filed.

Aug. 6—Reply Memorandum of Defendants, State Board of Public Welfare and Raleigh C. Hobson, State Department of Public Welfare, filed.

Sept. 11—Transcript of Proceedings before the Court (Winter, Circuit, J., Thomsen, C. J., and Harvey, J.) on June 25, 1968, filed.

Dec. 13—Opinion (Winter, Cir. J., Thomsen, C. J., and Harvey, J.), filed.

Dec. 23—Motion of Defendants to amend Findings of Fact and Judgment, or in the alternative to take additional testimony, or for a New Trial, or in the alternative to alter or amend the Judgment, filed.

1969

Jan. 2—Answer of Plaintiffs to Defendants' motion to amend findings of fact and Judgment, etc., filed.

Jan. 3—Hearing on Motion of Defendants to amend Findings of Fact and Judgment, or in the alternative to take additional testimony, or for a New Trial, or in the alternative to alter or amend the Judgment, and Answer of Plaintiffs, thereto, before (Winter, Cir. J.) (Thomsen, C. J.) and (Harvey, J.).

Jan. 3—Argued-held sub-curia. Briefs to be submitted.

Jan. 10—Memorandum of Plaintiffs in opposition to Defendants' Motion to amend Findings of Fact and Judgment, etc., and Exhibits A through G, filed.

Jan. 13—Stipulation of Counsel, re: Facts, and attachments, filed.

Jan. 20—Motion of Sheldon London to strike his appearance and to enter the appearance of J. Warren Eberhardt, Esquire, as attorney for Mayor and City Council of Baltimore; and Order (Thomsen, C. J.) granting leave as prayed, filed.

Jan. 24—Reply Memorandum of Defendants in support of motion for Re-Argument, etc. and attachments, filed.

Jan. 27—Motion of Defendants to Amend Findings of Fact and Judgment or in the Alternative to take additional testimony, or for a New Trial, or in the Alternative to alter or Amend the Judgment, and Exhibits A, B, C, D, E, F, G, H, I, J, and K, attached thereto, filed. (Filed separately).

Feb. 6—Supplemental Memorandum of Defendants in Support of Motion for Reargument, and Attachments, filed.

Feb. 25—Opinion and Order of Court (Winter, Circuit Court Judge), (Thomsen, Chief Judge United States District Court) and (Harvey, Judge U. S. District Court) granting in part and denying in part the Defendants motion to amend findings of facts and judgment, grant a new trial. Or receive additional evidence and alter or amend judgment, filed.

March 5—Memorandum of Defendants in Support of Proposed Order and Proposed Order attached, filed.

March 11—Memorandum of Plaintiffs in opposition to Defendants proposed order, filed.

March 14—Appearance of J. Michael McWilliams, Esq. co-counsel for defendants (except Esther Lazarus), Order of attorney, filed.

March 18—Order of Court (Winter, Circuit J., Thomsen, C. J. and Harvey, J.) permanently enjoining the Defendants as set forth etc., filed.

March 21—Notice of Appeal of Defendants, to the Supreme Court of the United States, filed. (copies mailed by counsel.)

April 3—Motion of Plaintiff Linda Williams to amend title of action to include additional members of the Maryland State Board of Social Services (formerly Maryland State Board of Public Welfare) as named parties defendant herein: Julian P. King, Lester S. Levy and Howard H. Murphy and to correct all further entries in the case to conform to said amendment, etc. and Order (Winter, J.) Circuit Court, Judge granting leave as prayed, filed.

May 15—Tanscript of Proceedings before the Court (Winter, Cir. J., Thomsen, C. J. and Harvey, J.) on June 24, 1968, June 25, 1968 and January 3, 1969, filed. (filed separately).

United States District Court for the District of Maryland

Civil Action No. 19250

Linda Williams, et al.,

Plaintiffs,

v.

Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare, et al.,

Defendants.

COMPLAINT

The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. §§2281, 2284, and 1343(3). This is a suit for injunctive relief authorized by Title 42 U.S.C. §1983 to be commenced by any citizen of the United States or

other person within the jurisdiction thereof to redress the deprivation under color of any state law, statute, ordinance, regulation, custom or usage, of those rights, privileges and immunities secured by the Constitution of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Federal Social Security Act, 42 U.S.C. §§601-609. This is also a suit for a declaratory judgment, pursuant to Title 28 U.S.C. §2201 of rights established by the aforementioned constitutional and statutory provisions.

This is a proper case for determination by a three-judge district court under 28 U.S.C. §2281, since it seeks an injunction to restrain the enforcement, operation and execution of the regulation set forth in the Maryland Manual of the Department of Public Welfare, Part II, Rule 200, Section VII,1. commonly referred to as the "maximum grant" regulation (a copy of which is attached hereto as Exhibit A) by restraining certain officials of the State of Maryland from the enforcement and execution of such state-wide administrative regulation on the ground of its unconstitutionality under the Constitution of the United States and on the ground of its conflict with the aforesaid federal statutes.

II.

This is a proceeding for an injunction enjoining the defendants from continuing to enforce or otherwise apply its "maximum grant" regulation. This is also a proceeding for a declaratory judgment that defendants' "maximum grant" regulation:

(A) Contravenes the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States; and

(B) Is contrary to the purposes of the federal and state Aid to Families with Dependent Children program as expressed by the Federal Social Security Act (42 U.S.C. §601 et seq.) and the statutes of the State of Maryland. (Article 88A, §§44A, and 49, Ann. Code of Md., 1957 ed.).

III.

This is a class action authorized by Rule 23 (b) (2) of the Federal Rules of Civil Procedure. The class which plaintiffs represent are all persons similarly situated who are needy parents of dependent children and their needy dependent children eligible for Aid to Families with Dependent Children (hereinafter referred to as AFDC) and who are or may be subjected to the onerous limitations of the "maximum grant". This class is so numerous as to make joinder of all members impracticable; there are questions of law or fact common to the class; the claims of the plaintiffs are typical of the claims or defenses of the class, and the plaintiffs will protect and represent the interests of the class. The defendants in their administration of the "maximum grant" have acted in a way generally applicable to the class plaintiffs represent.

IV.

The named plaintiffs in this case are:

A. Mrs. Linda Williams, a Negro adult, 33 years of age, and a citizen of the United States and Maryland, residing in the City of Baltimore, who is entitled to receive AFDC from the State of Maryland. She is the sole support of her eight children:

Name	*Age*	*Date of Birth*
Dorothy	16	November 1, 1951
Linda Gayle	14	October 11, 1953
Mildred	11	May 6, 1956
James	10	June 1, 1957
Anthony	9	October 18, 1958
Ronnie	7	October 9, 1960
Angela	5	October 29, 1962
Wanda	4	June 4, 1963

All of these children, live permanently with Mrs. Williams in a place of residence maintained by her as their

home. The father is continuously absent from plaintiff's home. Plaintiff's health is very poor, and she is presently suffering from a serious breast condition that has already required five surgical procedures. In addition, one of her children, Ronnie, has required hospital care and attention and continuing medical supervision, for convulsions from which he has suffered since his early childhood.

B. Junius Gary and Jeanette Gary, his wife, are Negro adults and citizens of the United States and Maryland, residing in the City of Baltimore, who are entitled to receive AFDC from the State of Maryland. Mr. Gary is the sole support of his eight children:

Name	*Age*	*Date of Birth*
Junius	11	February 20, 1957
Catherine	10	January 8, 1958
Anthony	9	November 4, 1958
James	8	September 21, 1959
Lynn Dora	7	November 29, 1960
Pamela	6	November 18, 1961
Mark	5	November 23, 1962
Thelma	4	November 14, 1963

All of the children of Mr. and Mrs. Gary live with them in their place of residence maintained as their home. Mr. Gary suffers from a severe neurological condition, which causes him to have seizures, lose consciousness, and is completely disabled from working. Mrs. Gary is required at home to care for her children, and is also in ill health, being treated at a hospital clinic for hypertension and painful conditions of her arms and legs. The only source of income for Mr. and Mrs. Gary and their children, is the maximum grant of $250 per month which they receive from AFDC.

V.

The named defendants are: Mr. Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare; Mr. Raleigh O. Hobson, Director, State Department of Public Welfare; Mr. Calhoun Bond, Mrs. Ralph O.

Dulany, Dr. W. Richard Ferguson, Mrs. Charles D. Harris, Mrs. Julian P. King, Mr. Lester S. Levy, Mr. Howard H. Murphy and Mr. J. O. Shuger, members of the Maryland State Board of Public Welfare, and Esther Lazarus, Director of Public Welfare for the City of Baltimore.

VI.

At all times hereinafter mentioned, the State of Maryland in order to receive federal funds for the AFDC programs, was required by the provisions of 42 U.S.C. §§601-609 to have formulated and submitted to the Secretary of the United States Department of Health, Education and Welfare for his approval a "state plan" for AFDC consistent with the Constitution of the United States and the provisions of the Federal Social Security Act (42 U.S.C. §§601 et seq.).

VII.

Part II, Rule 200, Section VII 1. of the Maryland Manual of the Department of Public Welfare provides that "(T)he amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:" The maximum grant permitted under AFDC in Baltimore City is $250 per month regardless of the size of the family unit and its actual need. Public assistance standards applicable to the City of Baltimore have been formulated (these schedules are attached hereto as Exhibit B). These schedules provide, *inter alia*, a standard for determining the cost of subsistence needs, shelter, insurance premiums, school supplies, laundry and clothing. The Department of Public Welfare uses these standards in determining the amount of an AFDC grant.

VIII.

Defendants acting under color of authority vested in them by the laws of the State of Maryland in the enforcement, operation and execution of the maximum grant regulation have pursued and are presently pursuing poli-

cies and practices which violate the constitutional rights of plaintiffs and the class they represent and which are contrary to the expressed policy of the Federal Social Security Act as follows:

A. Under the maximum grant regulation a family no matter what its size may receive no more than $250 per month in AFDC benefits. Thus the maximum grant regulation prevents the satisfaction of the needs of all children in a family of seven persons or more, as plaintiffs herein. For example, according to the standards of subsistence (food, clothing, and household supplies) and shelter formulated by the Maryland Department of Public Welfare a family of seven persons should receive $254. per month and a family of eight should receive $280. per month. This does not include the cost of insurance premiums, school supplies, and laundry since the amount would vary with the age of the children; the amount of need would be greater if these items were included. This disparity between the amount that should be received according to the standards of subsistence and shelter and the amount actually received because of the limitation of the maximum grant increases with the size of the family. Children in smaller families of six persons or less are not so affected by the maximum grant *e.g.*, the family of six persons may receive the full amount determined by the Department of Public Welfare to be necessary to satisfy their subsistence and shelter needs since this amount ($229) is less than $250. Plaintiffs and their children and the class they represent are denied rights guaranteed by the equal protection clause of the Fourteenth Amendment since the maximum grant regulation has the effect of treating needy children differently based on an arbitrary standard not related to the purpose of AFDC — the size of their family.

B. The express policy of the Federal Social Security Act (42 U.S.C. §§601 et seq.) is to "strengthen family life." This maximum grant regulation fails to effectuate this policy and indeed it encourages the disruption of families, since (as will hereafter be demonstrated) the needs of a child in a large family can best be satisfied if the child were to leave the family and live with a relative.

C. The maximum grant regulation complained of herein contravenes Maryland's expressed purpose of AFDC, which is to strengthen family life (Article 88A, §44A, Ann. Code of Md., 1957 ed.) since it encourages the disruption of families. Its limitation makes the amount of assistance insufficient to provide each child receiving AFDC with a reasonable subsistence compatible with decency and health as required by Article 88A, §49 of the Annotated Code of Maryland.

IX.

Under the maximum grant provision, plaintiffs are denied an amount of assistance commensurate with the standards of need established by the Maryland Department of Public Welfare. (The schedules are attached hereto as Exhibit B).

A. Mrs. Linda Williams, according to the standards of need formulated by the Department of Public Welfare, including the cost of insurance premiums, school supplies and laundry, should receive $296.15 per month for herself and her eight children, $46.15 more than the maximum grant of $250 per month which she actually receives.

B. Mr. Junius Gary and his wife, Jeanette, according to the same standards formulated by the Department of Public Welfare, including the cost of insurance premiums, school supplies and laundry, should receive $331.50 per month for themselves and their eight children, $81.50 per month more than the maximum grant of $250 per month, which they actually receive.

Two hundred fifty dollars ($250.00) per month is insufficient to provide plaintiffs with a reasonable subsistance compatible with decency and health and is inadequate to meet their minimum financial needs. After the payment of their rent each month, the Garys have a mere $175 per month to meet all of their needs for food and clothing and heating of their home and this amount is grossly inadequate, often leaving Plaintiffs with no money to purchase food, and putting their children to considerable embarassment and disadvantage in school activity because of their

cast-off clothing and the other effects of poverty, which sometimes causes them to miss school. The family has no money, automobile, or other property of any kind save a few items of old furniture and the inadequate clothing they have been able to purchase. They are in serious debt, particularly in regard to public utilities companies, which has caused their gas and electricity to be shut off on numerous occasions for failure to pay current charges, Their home is heated by gas space heaters, and the cut off of their utilities often leaves them with no heat in their home.

X.

The maximum grant regulation denies to plaintiffs and members of their class equal protection of laws in violation of the Constitution since they are given smaller assistance grants per person than are other recipients under the AFDC program on a basis wholly unrelated to the purpose of the program. The amount a needy child receives varies with the size of its family, so that children in smaller families are in the preferred position of receiving much more per child than children in larger families receiving AFDC.

Unhampered by the maximum grant, in a family of four (one parent and three children), on the basis of subsistence and shelter standards (since the cost of insurance and school supplies varies with the age of the child) the parent and each child receives assistance at the rate of $44.50 per month; in a family of five persons (one parent and four children), $41.50 for the parent and each child; and in a family of six persons (one parent and five children), $38.50 for the parent and each child. Since Mrs. Williams' children are in the position of being members of a large family, each person receives assistance at the rate of $27.78 for the parent and each child, although according to Maryland's standards of subsistence and shelter they should receive assistance at the rate of $32.16 per person. Each person in Mr. Junius' family receives assistance at the rate of $25.00 per person although according to Maryland's standards of subsistence and shelter they should receive assistance at the rate of $33.15 person. (The parents in each family receive the identical amount as each child.)

XI.

The maximum grant regulation encourages the disruption and separation of families in the following ways:

A. Mrs. Williams receives $250.00 per month in AFDC payments. Divided by the number of persons in the assistance unit, this amounts to $27.78 per person. If, however, she were to place two of her children of 12 years of age or over with relatives, each child so placed would be eligible to receive $79.00 each as an assistance unit, in accordance with schedule AA, attached hereto; with two of her children out of her family, she would still be eligible to receive the maximum grant of $250.00; however, each of the remaining children would receive aid at the rate of $35.71 per child. Thus, she and her eight children would then be receiving over-all benefits of $408.00; $158.00 above the maximum grant, constituting an anomolous situation of benefits accruing as a result of the break-up of the family.

B. Mr. and Mrs. Gary receive $250.00 per month in AFDC payments. Divided by the number of persons in the assistance unit this amounts to $25 per person, per month. If, however, they were to place two of their children between the ages of six and twelve with relatives or strangers, each child so placed would be eligible to receive $65 each as an assistance unit, in accordance with schedule AA, attached hereto; with two of their children out of their family, they would still be eligible to receive the maximum grant of $250; however, each of the remaining members of the assistance unit would receive aid at the rate of $31.25 per person. Thus, Mr. and Mrs. Gary and their eight children would then be receiving over-all benefits of $380, $130 above the maximum grant, constituting an anomolous situation of benefits accruing as a result of the break-up of the family.

Because of the operation of the maximum grant regulation, families are rewarded if they break up their families and place their children outside the home with relatives or others, since the amount received per child is increased and the maximum grant may be circumvented. Plaintiffs

and the class they represent have the option of keeping their families together, the goal expressed by the Federal Social Security Act, or placing their children with relatives or strangers in order that their needs be satisfied. Failure by the Maryland Board of Public Welfare to accommodate the actual needs of children of necessity, results in the disruption of family solidarity.

XII.

Under the Maryland AFDC status and the "maximum grant" provisions complained of, enforced, applied and implemented by defendants, plaintiffs are denied a minimal standard of living commensurate with the minimum standard of need established by the State of Maryland Department of Public Welfare for a family of eight children, as prescribed in the standards established by the Department of Public Welfare, which sets said minimum for Linda Williams and her family at $296.15 per month for herself and her eight children, and at $331.50 per month for Junius Gary and his wife and eight children, as more particularly described in the schedules attached hereto as Exhibit B.

The "maximum grant" provisions herein complained of as enforced, applied and implemented by the defendants, their predecessors in office, agents and employees, bear no reasonable relation to and contravene the purpose and intent of the Federal Social Security Act, Title 42, United States Code, Section 601, which is to furnish assistance to needy dependent children, to maintain and strengthen family life, and to help the parents of such children to attain personal independence and self-support, in that said provisions:

(a) result in a discriminatory lack of uniformity in the amount of assistance available to individual children and parents with similar needs;

(b) penalize children and parents in large families and encourage the break-up of such families into small units;

(c) deny large families a standard of living commensurate with the minimum standard of assistance and standard of need as promulgated by the Maryland State Welfare Department as determined by its own economic calculations.

(d) deny plaintiffs and other large families receiving public assistance even sufficient assistance as will meet minimum nutritional standards and thereby gradually effect a program of starvation.

The "maximum grant" herein complained of, enforced, applied, and implemented by defendants, their predecessors in office, agents and employees, violates and is repugnant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in that by imposing an arbitrary restriction on the amount of assistance available to any family regardless of the individual needs of particular children or parents said provisions discriminate against plaintiffs and all others similarly situated, because of the size of their families, in a manner which bears no substantial, reasonable, or fair relation to the purposes and intent of the federal and state AFDC legislation under which said provisions operate, and thereby create arbitrary, irrational, and discriminatory classifications which deprive plaintiffs and members of their class of equal protection of the laws.

Defendants' enforcement, application, and implementation as to plaintiffs of the "maximum grant" provisions herein complained of has caused plaintiffs extreme hardship, suffering, and anxiety, including inadequate food, clothing, and shelter, and will continue to suffer severe and irreparable injury to their health and well-being, and to their family life, as a result of the enforcement, application, and implementation of the "maximum grant" provisions until said provisions are declared unlawful and unconstitutional and their enforcement enjoined by this Court.

XIII.

Finally, the enforcement, application and implementation of the "maximum grant" provisions by the defendants,

has violated and continues to violate the due process clause of the Fourteenth Amendment to the United States Constitution, as applied to the plaintiffs, in that it violates the due process guarantee of marital privacy. All of the children of the plaintiffs, Junius Gary and Jeanette Gary, his wife, and the plaintiff, Linda Williams, were born before application was made for welfare benefits, and no additional children have been born to the plaintiffs since they began receiving an AFDC grant from the defendants; nevertheless, the amount of their grant is less than the adequate assistance for minimal food and shelter needs as computed by the defendants, even though the plaintiffs freely choose a large family before receiving AFDC assistance. Thus the "maximum grant" provision intrudes on the right of marital privacy of the plaintiffs both before and during the period of AFDC assistance by imposing an unconstitutional burden on the exercise of a constitutional right by the plaintiffs, by denying an amount of assistance equal to the actual needs of the families of the plaintiffs.

XIV.

No adequate administrative remedy, or adequate remedy at law, is available.

Wherefore, plaintiffs respectfully request the Court, on behalf of themselves and others similarly situated, to:

1. Convene a three-judge district court to determine this controversy pursuant to Title 28 U.S.C. §§2281 and 2284;

2. Enter a preliminary and permanent injunction:

(a) prohibiting, restraining and enjoining defendants, their successors in office, and all of their agents from enforcing, applying or implementing said maximum grant regulations;

(b) prohibiting payments of assistance which are less than the minimum subsistence and shelter needs as established by the Maryland Board of Public Welfare, and

ordering and requiring defendants to make welfare payments to plaintiffs and members of the class they represent in accordance with minimum subsistence and shelter needs as established by the Maryland State Board of Public Welfare; and

(c) ordering and requiring defendants, their successors in office, all of their agents, to furnish AFDC assistance to Plaintiffs and all others similarly situated without regard to said maximum grant regulations:

3. Enter a declaratory judgment pursuant to Title 28 U.S.C. §2201, declaring that said maximum grant regulations:

(a) contravenes the purpose and intent of the AFDC Program as explained in the Federal Social Security Act (42 U.S.C. §§601 et seq.), and the Maryland Public Legislation (Article 88A, §§44A and 49); and

(b) contravenes the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, and for such further or alternative relief as this Court may find to be just and equitable.

(Signatures of counsel and certificate of service.)

EXHIBIT A

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:

   A. For local departments under any "Plan A" of Shelter Schedule B $250

      For local departments under any "Plan B" of Shelter Schedule B $240.

Except that:

a. If the requirements of a child over 18 are included to enable him to complete high school or training for employment (III - 3, C), the grant may exceed the maximum by the amount of such child's needs.

b. If the resource of support is paid as a refund (V-2, F), the grant may exceed the maximum by an amount of such refund. This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

2. *GPA or ADC-E is not Available* — To supplement full-time wages. To meet need due to being disqualified for unemployment insurance. To supplement unemployment insurance; *except* when the individual receiving it is enrolled in an educational and/or training program to learn a skill needed to have opportunity for employment, acquire a new skill which is in demand in the labor market, or improve an existing skill.

3. *Period Covered and Method of Payment* — The period covered by a grant shall be the calendar month. The amount of the grant is calculated on a monthly basis and is paid by check, unless otherwise specified by local policy. It is paid for current need and may not be paid for a past period excepting as specifically permitted by the State Manual.

EXHIBIT B[1]

Public Assistance — Rule 200

SCHEDULE A

STANDARD FOR DETERMINING COST OF SUBSISTENCE NEEDS

Number of persons in assistance unit (include unborn child as an additional person)	I	II	III	IV	V
	MONTHLY COSTS WHEN				
	No heat or utilities included with shelter	*Light &/or cooking fuel included with shelter*	*Heat with or without light included with shelter*	*Heat, cooking fuel & water heating included with shelter*	*Heat & all utilities included with shelter*
1 person living—Alone	$ 51.00	$ 49.00	$ 43.00	$ 40.00	$ 38.00
With 1 person	42.00	41.00	38.00	36.00	35.00
With 2 persons	38.00	37.00	35.00	34.00	33.00
With 3 or more persons	36.00	35.00	34.00	33.00	32.00
2 persons living—Alone	84.00	82.00	76.00	72.00	70.00
With 1 other person	76.00	74.00	70.00	68.00	66.00
With 2 or more other persons	72.00	70.00	68.00	66.00	64.00
3 persons living—Alone	113.00	110.00	105.00	101.00	99.00
With 1 or more other persons	108.00	106.00	101.00	99.00	97.00
4 persons	143.00	140.00	135.00	131.00	128.00
5 persons	164.00	162.00	156.00	152.00	150.00
6 persons	184.00	181.00	176.00	172.00	169.00
7 persons	209.00	205.00	201.00	197.00	193.00
8 persons	235.00	231.00	227.00	222.00	219.00
9 persons	259.00	256.00	251.00	247.00	244.00
10 persons	284.00	281.00	276.00	271.00	268.00
Each additional person over 10 persons	24.50	24.50	24.50	24.50	24.50

Modification of Standard for Cost of Eating in Restaurant

Add $15.00 per individual.

R. #314
11/67

EXHIBIT B[2]

Public Assistance — Rule 200

SCHEDULE AA

STANDARD FOR ROOM AND BOARD ARRANGEMENT FOR A CHILD

Kind of Care	MONTHLY ALLOWANCE*		
	Room & Board	*Clothing*	*Pre-added Totals*
Regular Care			
Infant up to 6	$50.00	$ 9.00	$59.00
6 up to 12	50.00	15.00	65.00
12 and over	60.00	19.00	79.00**
Special Care			
Infant up to 6	$75.00	$ 9.00	$84.00
6 up to 12	75.00	15.00	90.00
12 and over	75.00	19.00	94.00**

Regular Care is that which requires the usual and ordinary supervision in the home.
Special Care is that which requires unusual supervision and attention from a home equipped to give such care.

* No other items allowable in the grant.

** When calculating need for mother of unborn child, add to maximum $24.50: $20.00 additional food allowance; $4.50 towards cost of layette.

R. #314
11/67

EXHIBIT B[3]

Public Assistance — Rule 200

SCHEDULE B — PLAN A

STANDARD FOR DETERMINING COST OF SHELTER

Plan A to be used by the following local departments:

Allegany	Baltimore City	Cecil	Prince George's
Anne Arundel	Baltimore County	Montgomery	

Number of persons in assistance unit	I	II	III	IV	V
	MONTHLY COSTS WHEN				
	No heat or utilities included with shelter	*Light &/or cooking fuel included with shelter*	*Heat with or without light included with shelter*	*Heat, cooking fuel & water heating included with shelter*	*Heat & all utilities included with shelter*
1 or 2 persons	$ 35.00	$ 37.00	$ 43.00	$ 46.00	$ 48.00
3 persons	35.00	38.00	43.00	47.00	49.00
4 persons	35.00	38.00	43.00	47.00	50.00
5 or 6 persons	45.00	48.00	53.00	57.00	60.00
7 or more persons	45.00	49.00	53.00	57.00	61.00

R. #307
2-66

EXHIBIT B[4]

Public Assistance — Rule 200

SCHEDULE B — PLAN B

STANDARD FOR DETERMINING COST OF SHELTER

Plan B to be used by the following local county departments:

Calvert	Frederick	Queen Anne	Wicomico
Caroline	Garrett	St. Mary's	Worcester
Carroll	Harford	Somerset	
Charles	Howard	Talbot	
Dorchester	Kent	Washington	

Number of persons in assistance unit	I	II	III	IV	V
	MONTHLY COSTS WHEN				
	No heat or utilities included with shelter	*Light &/or cooking fuel included with shelter*	*Heat with or without light included with shelter*	*Heat, cooking fuel & water heating included with shelter*	*Heat & all utilities included with shelter*
1 or 2 persons	$ 31.00	$ 33.00	$ 39.00	$ 42.00	$ 44.00
3 persons	31.00	34.00	39.00	43.00	45.00
4 persons	31.00	34.00	39.00	43.00	46.00
5 or 6 persons	31.00	34.00	39.00	43.00	46.00
7 or more persons	31.00	35.00	39.00	43.00	47.00

R. #307
2-66

EXHIBIT B[5]

Public Assistance — Rule 200

SCHEDULE E

STANDARD FOR DETERMINING THE COST OF INSURANCE PREMIUMS

Age of Individual	*Insurance "as paid" not to exceed a maximum monthly cost per individual*
Under 18 years	$0.25
18 through 64 years	.65
65 years and over	1.10

SCHEDULE F

STANDARD FOR DETERMINING THE COST OF SCHOOL SUPPLIES

School Grade	*Monthly Cost Per Child in School*
In elementary school (Grades 1 through 6)	$0.50
In junior or senior high school (Grades 7 through 12)	1.00

R. #243
10-59

EXHIBIT B[6]

Public Assistance — Rule 200

SCHEDULE G

STANDARD FOR DETERMINING THE COST OF SPECIAL DIETS

Type of Diet	*Monthly Cost*
Plan A	$19.00
High calorie high protein high vitamin	
Severe sodium restricted	
Low carbohydrate	
Gluten free	
Ketogenic	
Plan B	12.00
Moderate sodium restricted	
Smooth bland	
Calorie restricted	
Modified fat	
Moderate fat high carbohydrate high protein	

SCHEDULE H

STANDARD FOR DETERMINING THE COST OF LAUNDRY

Cost of laundry may *not* be added to Standard for Nursing Home Care

Size of Family	*Monthly Cost*
One or two persons	$2.00
Three or more	4.00

R. #306

EXHIBIT B[7]

Public Assistance — Rule 200

SCHEDULE J

STANDARD FOR DETERMINING AMOUNT OF RESOURCE IN FOOD

Size Of Family	Monthly Amount of Resource					
		For Specified Food Groups				
	For All Food Items	Milk, Eggs & Meat	Milk & Meat	Milk & Eggs	Milk Only	Eggs Only
1 person—						
Living alone	$29.00	$10.50	$ 9.00	$ 6.75	$ 5.25	$ 1.50
Living with 1 other person	26.00	9.75	8.35	6.25	4.85	1.40
Living with 2 other persons	25.00	8.25	7.00	5.40	4.15	1.25
Living with 3 or more other persons	24.00	7.50	6.35	4.90	3.75	1.15
2 persons—						
Living alone	52.00	19.50	16.75	12.50	9.75	2.75
Living with 1 other person	50.00	16.50	14.00	10.75	8.25	2.50
Living with 2 or more other persons	48.00	15.00	12.75	9.75	7.50	2.25
3 persons—						
Living alone	75.00	25.00	21.25	16.25	12.50	3.75
Living with 1 or more other persons	72.00	22.50	19.00	14.75	11.25	3.50
4 persons	95.00	30.00	25.50	19.50	15.00	4.50
5 persons	112.00	35.00	29.75	22.75	17.50	5.25
6 persons	127.00	39.50	33.50	25.75	19.75	6.00
7 persons	147.00	44.00	37.25	28.75	22.00	6.75
8 persons	168.00	48.50	41.00	31.75	24.25	7.50
9 persons	188.00	53.00	45.00	34.50	26.50	8.00
10 persons	208.00	57.50	48.75	37.50	28.75	8.75
Each additional person over 10 persons	20.00	4.50	3.75	3.00	2.25	.75

R. #312

5-67

EXHIBIT B[8]

Public Assistance Rule 200

SCHEDULE K

STANDARD FOR DETERMINING AMOUNT OF RESOURCES IN CLOTHING

Number of Persons in Assistance Unit	*Monthly Amount of Resource*
One person	$ 4.50
2 persons	9.00
3 persons	14.50
4 persons	20.00
5 persons	24.00
6 persons	28.00
7 persons	31.50
8 persons	35.00
9 persons	38.50
10 persons	42.00
Each additional person over 10 persons	3.50

R. #307

United States District Court for the District of Maryland

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. Introduction

This is a class action for declaratory and injunctive relief brought by Plaintiffs who are recipients of public assistance under the Maryland Program for Aid to Families with Dependent Children, against public welfare officials of the State of Maryland challenging the constitutionality of the maximum grant provision, Rule 200 VII, 1. of the *Manual of the Department of Public Welfare*. Rule 200 imposes an absolute limit on the amount of AFDC assistance to a family unit regardless of the actual need of the family as computed under schedules issued by the State Board of Public Welfare of the State of Maryland.

This court has jurisdiction to entertain this action since plaintiffs seek to have a state-wide regulation declared unconstitutional and to enjoin its operation on the grounds of its repugnance to the United States Constitution. The Court's attention is also respectfully directed to the cases cited in Plaintiffs' *Points and Authorities In Support of Application For A Three-Judge Court*, and in particular the case of *Smith v. King*, 277 F. Supp. 31 (M.D. Alabama, 1967), probable jurisdiction noted, 390 U.S. 903 (1968), also a suit for injunctive relief against enforcement of a statewide regulation, set forth in the *Alabama Manual for Administration of Public Welfare*.

II. Statement of Facts

Plaintiffs are members of a class composed of needy parents of dependent children and their needy dependent children, residing in the State of Maryland and eligible to receive public assistance under the Maryland Aid to Families with Dependent Children (AFDC) Program. The amount

of this aid is and has been restricted and limited by the application and enforcement of the "maximum grant" provisions hereby complained of, to wit: Rule 200 VII 1., Maryland *Manual of the Department of Public Welfare.*

Plaintiff, Linda Williams, is an adult citizen of the United States and a resident of the City of Baltimore, State of Maryland. She is the mother and sole support of the Plaintiff children: Dorothy, age 16; Linda Gayle, age 14; Mildred, age 12; James, age 10; Anthony, age 9; Ronnie, age 7; Angela, age 5; Wanda, age 4; all of the children named live with her in a place of residence maintained by her as her home. The Plaintiff's husband, Willie Williams, the father of all the named children, is continuously absent from the plaintiff's home, having deserted her after the birth of their last child. Plaintiff has no income, resources, support or maintenance other than the public assistance which she receives in the amount of $250 a month, which is the maximum grant permitted under AFDC in Baltimore City, regardless of the size of the family unit and its actual need.

The plaintiffs, Junius Gary and Jeanette Gary, his wife, are adult citizens of the United States and residents of the City of Baltimore, State of Maryland, and Mr. Gary is the sole support of the Plaintiffs' children: Junius, age 11; Catherine, age 19; Anthony, age 9; James, age 8; Lynn Dora, age 7; Pamela, age 6; Mark, age 4; Thelma, age 4. All of the children of Mr. and Mrs. Gary live with them in their place of residence maintained by them as their home. Mr. Gary suffers from a severe neurological condition, which causes him to have seizures, dizzy spells and loss of consciousness. He has been found to be completely disabled from working. Mrs. Gary is required at home to care for her children, and is also in ill health, being treated at a hospital clinic for hypertension and painful conditions of her arms and legs. The Plaintiffs, Mr. and Mrs. Gary, have no income, resources, support or maintenance other than the $250 a month they receive in public assistance, which is the maximum grant they are entitled to under the Maryland Aid to Families with Dependent Children Program (hereinafter referred to as AFDC program).

The effect of applying the "maximum grant" regulation by the State of Maryland is to reduce the Plaintiffs and their families to a standard of living substantially below that established as a minimum standard of need by the State of Maryland Department of Public Welfare; the minimum standard of need formulated for Mrs. Williams and her eight children by the Department of Public Welfare, including the cost of insurance premiums, school supplies and laundry, is $296.15 per month, $46.15 more than the maximum grant of $250 per month which she actually receives; the standard of need formulated by the Department, including the cost of insurance premiums, school supplies and laundry, for Mr. and Mrs. Gary and their eight children is $331.50 per month, $81.50 per month more than the maximum grant of $250 per month which they actually receive. (The above needs are determined in accordance with the schedules attached to the Bill of Complaint as Exhibit B, representing the schedules for establishing need in the Maryland *Manual of the Department of Public Welfare.*)

III. Argument

Introduction

This court "* * * may, at any time, grant a temporary restraining order to prevent irreparable damage * * *." Title 28 U.S.C. Sec. 2284 (3). As to the standards for the granting of a preliminary injunction, these have been clearly stated in *Embassy Dairy v. Cammalier*, 211 F. 2d 41 (1954). In that case it was stated on page 48:

> "* * * Whether or not a preliminary injunction should issue is ordinarily a matter for the discretion of the District Court to be exercised upon this series of estimates: 'The relative importance of the rights asserted and the acts to be enjoined, the irreparable nature of the injury allegedly flowing from denial of preliminary relief, the probability of the ultimate success or failure of the suit, the balance of damage and convenience generally.' (Quoted from *Communist Party v. McGrath*, 96 F. Supp. 47, 48 (D.C. D.C., 1951)."

A. *Plaintiffs are suffering irreparable injury because of the enforcement by the Defendants of the "maximum grant" regulation in the payment of welfare assistance.*

Where issues raised by attack on the constitutionality of a state statute or regulation discloses that something more than a frivolous or unreasonable attack is being made on the regulation and where continued enforcement will result in greater injury to plaintiffs than to Defendants, should the regulation ultimately be held invalid, enforcement of the regulation should be temporarily enjoined pending determination as to its constitutionality. *Traffic Tel. Workers Federation of N.J. v. Driscoll*, 71 F. Supp. 681 (D.C. N.J. 1947). It is conceded that in any motion for a preliminary injunction, the court must find as a condition of granting the relief requested that irreparable injury will be suffered by the Plaintiff if relief *pendente lite* is not granted. *Virginia Petroleum Jobbers Ass'n v. Federal Power Commission*, 259 F. 2d 921 (C.A. D.C. 1958).

The plaintiffs and their minor children are in great, immediate and continuing need of public assistance commensurate with the minimal standards of need as established by the Defendant Department. The Plaintiff parents have no other source of support to provide their families with food, shelter and the other necessities of life. As set forth in greater particularity in their Bill of Complaint, and in their affidavit in support of motion for a temporary restraining order and preliminary injunction, the Plaintiffs are faced with a difficult choice. They must choose between keeping their families intact, an express purpose of the Federal Social Security Act (42 U.S.C. Sec. 601 et seq.) and Article 88A of the Annotated Code of Maryland (1957 ed.) sec. 44A, with inadequate food, clothing and shelter; or separating their families by placing some of their children in institutions or foster homes, since the present provisions enable the needs of a child in a large family to be met if the child is so placed. Each choice means immediate and certain irreparable injury to the families' cohesiveness and unity. The plaintiff parents

wish to keep all of their children at home and to provide them with the basic necessities of life.

B. *Defendants will suffer no substantial damage or inconvenience if assistance is granted to Plaintiffs pendente lite, whereas Plaintiffs and their children will suffer substantial and irreparable harm.*

If the plaintiff parents would receive public assistance payments in the amount determined by the Defendant Department of Public Welfare, to be the minimal standards required for the support of the families of the Plaintiff parents, which is in excess of the maximum grant of $250 per month, the amount that they now receive, the State of Maryland would suffer *de minimis* injury. The plaintiff, Linda Williams, would be eligible to receive $296.15 per month for herself and her eight children, $46.15 more than the maximum grant of $250 per month which she actually receives. The plaintiffs, Junius Gary and Jeanette Gary, his wife would receive $331.50 per month for themselves and their eight children, $81.50 per month more than the maximum grant of $250 per month, which they actually receive. Although the amounts received in excess of the maximum grant by the plaintiffs represents for them their only possibility of retaining their family unit, in terms of the effect it would have upon the Defendant, State Department of Public Welfare, when compared to the more than $89,396,891.43 which was spent in the year ending June 30, 1967, by the Department of Public Welfare, the additional grant to the Plaintiffs of $46.15 per month for the Williams family and $81.50 per month for the Gary family is so inconsiderable as to be *de minimis*. Such a temporary restraining order was granted by this Honorable Court in the case of Mantell v. Dandridge, (Civil Action #18792, Dec. 4, 1967) to prevent irreparable injury to Plaintiffs as a consequence of the State of Maryland's statutory requirement of one year's residency for public assistance. A finding of *de minimis* damage was explicitly made by the three-judge court in a number of the other residency cases in other federal district jurisdictions.

A three-judge court in the District of Columbia stated:

> "* * * Plaintiffs will suffer irreparable loss, injury and damage without comparable loss to the public unless preliminary relief is granted * * *."

Harrell v. Tobriner, 279 F. Supp. 22 (D.C. D.C. 1967), compare also the case of *Smith v. Reynolds*, 277 F. Supp. 65 (E.D. Pa. 1967), *Ramos v. Health and Social Services Board*, 276 F. Supp. 474 (E.D. Wisc. 1967) (preliminary injunction granted); *Denny v. Health and Social Services Board* (Civil Action No. 67-C-426, E.D. Wisc., temporary restraining order granted December 22, 1967); *Johnson v. Robinson* (Civil Action No. 67-C-1883, N.C. 111, preliminary injunction granted December 28, 1967); *Porter v. Graham* (Civil Action No. Çiv. -2348- Tucson, D. Ariz., preliminary injunction granted January 24, 1968.)

There, as in the present case, the record disclosed on its face that something more than a merely capricious or wholly unreasonable attack was being made on a state regulation, that important rights were at stake, and that denial of relief would result in greater injury to applicants than would be inflicted upon defendants by the granting of relief, and in those courts, temporary or preliminary relief was granted. Compare also *Traffic Tel. Workers v. Driscoll, supra.*

In *Woods v. Wright*, 334 F. 2d 269 (5th Cir., 1964) the Circuit Court of Appeals held that where Negro children were expelled from school without a hearing after being arrested in a civil rights demonstration, the District Court should have issued a temporary restraining order prohibiting the expulsions and ordering the children readmitted to school. In so doing, the court stated:

> "* * * When there is a clear and imminent threat of an irreparable injury amounting to manifest oppression it is the duty of the court to protect against the loss of the asserted right by a temporary restraining order. * * *" 334 F. 2d at 374.

If expulsion of children from school is sufficiently serious harm to require a temporary restraining order, how much more warranted is such an order in this case to protect the minimal subsistence level of life and health of the plaintiffs. As was stated in the case of *Harris Stanley Coal & Land Co. v. Chesapeake & O. Ry. Co.*, 154 F. 2d 450, 453 (6th Cir., 1946), *cert. denied.* 329 U.S. 761 (1946):

> "* * * A court of equity will not gamble with human life, *at whatever odds* and for loss of life there is no remedy that in an equitable sense is adequate. * * *"

C. *The Temporary Restraining Order and Preliminary Injunction Should Be Issued Since Plaintiffs Will Likely Prevail On The Merits.*

1. *The Maximum Grant Provision of Rule 200, Section VII 1. in Maryland's Aid to Families with Dependent Children Program violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.*

The guarantee of equal protection of the laws under the Fourteenth Amendment to the United States Constitution has been stated to mean that:

> "The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose * * *." *McLaughlin v. Florida*, 379 U.S. 184, 189 (1964).

While the government may classify people for various purposes it may not classify on arbitrary or irrational grounds. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), *Carrington v. Rash*, 380 U.S. 89 (1965). In the instant case the classification is subject to even closer scrutiny because it is created by administrative regulation under Rule 200 VII 1., issued by the Maryland State Department of Public Welfare. The same deference to legislative judgment is not due to administrative rule-making and it is clear that an agency may not make rules or regulations which are out of harmony with the act being administered. 1 Am. Jur. 2d *Administrative Law*, Section 132, and cases there cited. The

classification created by Rule 200, VII 1. is unreasonable in light of the purposes of the Aid to Families with Dependent Children (hereinafter referred to as AFDC program). The most accurate guide to those purposes in Maryland is the statutory declaration of purpose in Section 44A of Article 88A of the Annotated Code of Maryland (1957 ed.):

> "* * * It is hereby declared that the primary purpose of aid given under this subtitle is the *strengthening of family life through services and financial aid*, whereby families may be assisted to maximum self-support in homes meeting the requirements of child care established by law in this State * * *." (Emphasis supplied).

This statutory declaration of purpose implicitly refers to the social evil that the AFDC program reaches: the instability of family units that lose the support of one parent. This declaration is reinforced by a similar federal declaration of purpose in the Social Security Act of 1935, 42 U.S.C. §601:

> "* * * *(to encourage) the care of dependent children in their own homes* or in the homes of relatives by enabling each state to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such state, to needy dependent children and the parents or relatives with whom they are living, to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continual parental care and protection * * *." (emphasis supplied).

The AFDC program in Maryland is required by the Social Security Act, 42 U.S.C. §602, to implement these federal policies in order to qualify for federal grants to its AFDC program. Rule 200 VII 1. provides that:

> "1. Amount — the amount of the grant is the resulting amount of need when resources are deducted from

requirements as set forth in this Rule, *subject to a maximum of each grant from each category:*

A. For local departments under any "Plan A" of Shelter Schedule B $250

For local departments under any "Plan B" of Shelter Schedule B $240 . . ." (emphasis supplied).

Rule 200 VII 1. imposes an absolute maximum limit on AFDC assistance regardless of the actual need of the recipient family unit. For example, the Department of Public Welfare of the City of Baltimore computes the costs of subsistence needs of a family of seven persons at $254.00 per month. For a family of eight persons subsistence needs are calculated to be at least $280.00 per month. (See schedule attached to Bill of Complaint as Exhibit B.) The maximum grant permitted in Baltimore City is $250.00 per month. In effect the maximum grant provision of Rule 200 VII 1. limits AFDC assistance to an amount less than actual need in family units of seven persons or more. Obviously, the disparity between actual need and the amount of AFDC assistance increases in larger family units.

Rule 200 VII 1. creates two classes of needy dependent children and their parents. The first class, families of six persons or less, is granted AFDC assistance equal to actual need; the second class, families of seven persons or more, receives an amount of assistance which not only is insufficient to meet actual need but also is unrelated to actual need. The classification created by Rule 200 VII 1. is based solely on the size of the family unit. In the instant case the minimal standard of need for the family unit of the plaintiff, Linda Williams, is $296 per month according to the schedule issued by the Maryland State Board of Public Welfare. The application of the arbitrary maximum grant of $250 denies plaintiff's family the basic necessities of adequate food and shelter.

None of the purposes of the AFDC program is served by the classification created by Rule 200 VII 1. Instead of strengthening family life, large family units are encouraged to separate in order to meet their needs. If plaintiff,

Linda Williams, placed two of her eight children who are 12 years of age or over with eligible relatives, each child so placed would be entitled to receive $79 per month as an assistance unit. In addition, the rest of the old family unit would still qualify for the maximum grant of $250. The family unit would thus be receiving a total amount of AFDC assistance of $408, as a result of the dissolution of the family unit. However, the dissolution of family units prompted by Rule 200 VII 1. defeats the very purpose of the AFDC program.

As an economy measure Rule 200 VII 1. still lacks a constitutionally permissible purpose. This issue was squarely faced in *Collins v. State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4 (1957) in which the court held that the Iowa maximum grant provision violated the equal protection clause of the Iowa Constitution. Equal protection under the Iowa Constitution is identical with the federal guarantee. *Dickinson v. Porter*, 240 Iowa 393 at 400, 35 N.W. 2d 66 at 77 (1948). The court stated in the *Collins* case at p. 7 of 81 N.W. 2d:

> "The books are replete with cases dealing with the above constitutional provision both here and elsewhere. The general rule is that if there is any reasonable ground for the classification and it operates equally upon all within the same class, there is uniformity in the constitutional sense . . .
>
> Under the record it appears that the State Board in the administration of the Act and to insure a uniform state-wide program for aid to dependent children (Section 239. 18, Code, 1954) has established a standard schedule of amounts necessary for the minimum of subsistence, which amounts are based upon the needy-per-child basis . . . Under the chapter prior to the amendment each child receives such amount irrespective of the number in the home. Under the chapter as amended each child may receive the minimum amount without regard to the number in the home, up to the point where the sum total reaches $175, at which point additional assistance to that home

terminates. Stating it another way, under the amendment assume that the minimum amount per child is $47 per month. Each child receives the amount provided the total amount paid to any one recipient does not exceed $175. If in excess of this amount, the payment to such recipient is on a *pro-rata* basis per child in the home. However, if the instant children should be distributed among the homes of various relatives named in Section 239.1 (4), and nothing in the chapter seems to prohibit such distribution, each of the involved children would be entitled to the minimum allowance.

The amendment on its face appears to be, and was, we think, intended as an *economy measure*. In effect it is a sub-classification of the original classification, i.e., dependent children, based solely on the number of children in the home, with no consideration as to need, a circumstance completely disconnected with the basic classification and the purpose and reason therefore. See *Keefner v. Porter*, 228 Iowa 844, 293 N.W. 501. We think the amendment is clearly discriminatory between dependent children as defined in Section 239.1 (4) and is purely arbitrary and unreasonable in view of the announced purpose of the act." (emphasis added).

In the welfare residency cases courts have stated repeatedly that the preservation of the public purse does not justify separate treatment of persons similarly situated. *Thompson v. Shapiro*, 270 F. Supp. 331 (D. Conn. 1967), probable jurisdiction noted, 36 L.W. 3286 (1968); *Green v. Department of Public Welfare*, 270 F. Supp. 173 (D. Del. 1967); *Harrell v. Tobriner*, 279 F. Supp. 22 (D.C. D.C. 1967). In *Green* the court stated, at p. 177 of 270 F. Supp., that, "The protection of the public purse, no matter how worthy in the abstract, is not a permissible basis for differentiating between persons who otherwise possess the same status in their relationship to the State of Delaware." In other words, the arbitrary selection of a class which bears the burden of state economizing is constitutionally

impermissible. *Rinaldi v. Yeager*, 384 U.S. 305 (1966); *Green v. Department of Public Welfare*, 270 F. Supp. 173 (D. Del. 1967), *Smith v. Reynolds*, 277 F. Supp. 65 (E.D. Pa. 1967). The governmental economizing is even more arbitrary here because, unlike the invalid residency requirement, the maximum grant provision does not even arguably protect against unscrupulous recipients.

Furthermore, in light of our expanding economy, it is fallacious to assume that welfare expenditures are rising. In Research Report Number 2, July, 1967, published by the defendant, State Department of Public Welfare of Maryland, it is stated on p. 6:

> Costs and numbers of recipients of assistance have risen due to the extension of Public Welfare services and benefit levels; it must be noted however that while actual dollar costs have risen, Public Welfare expenditures have decreased as a percentage of both National Personal Income and Gross National Product.

2. *Rule 200 VII 1. violates Section 601 of the Federal Social Security Act which requires that assistance meet basic needs in order to strengthen the family unit.*

The federal policies of the Social Security Act of 1935 are expressed in Section 601 of Title 42 of the United States Code:

> "... *to help maintain and strengthen family life* and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continual parental care and protection ..." (emphasis supplied).

The administrative interpretation of basic federal policy which is binding on the states is set forth in regulation 3401, Part IV of the Federal Handbook of Public Assistance Administration:

> "To live in the family to which he belongs is the foundation of a child's security. The public has an inter-

> est and an obligation in sustaining the contribution which parents and immediate family make to the development of a child. Financial inability to meet a child's needs, therefore, should not be allowed to force a parent to surrender responsibility for bringing up the child."

Section 601 clearly expresses a legislative intent to strengthen family life through AFDC assistance.

The federal statutory policy of Section 601 of the Social Security Act is binding on the states. *Cf. State v. Bandjord*, 92 P. 2d 273, 279 (Mont. 1939). See also, *Pearson v. State Social Welfare Board*, 54 C. 2d 184, 353 P. 2d 33, 35, 39 (1960); *Fenton v. Department of Public Welfare*, 182 N.E. 2d 528, 530 (Mass. 1962). Maryland statutes require that the State Department of Public Welfare comply with all pertinent federal requirements in order to qualify for federal grants to its AFDC program. Section 15, Article 88A of the Annotated Code of Maryland. Moreover, the State of Maryland has adopted the very language of section 601 as its AFDC policy in Section 44A of Article 88A of the Annotated Code of Maryland which states that:

> "It is hereby declared that the primary purpose of aid given under this subtitle is the strengthening of family life through services and financial aid, whereby families may be assisted to maximum self-support in homes meeting the requirements for child care established by law in this state."

Rule 200 VII 1. imposes an arbitrary limit on the amount of AFDC assistance regardless of the actual need of the family unit. It ignores the clear legislative mandate of Section 601 to meet actual need. Furthermore, it encourages the dissolution of family units in violation of the federal and state policy of strengthening family life. The policies of meeting actual need and strengthening family life are interwoven for surely a healthy family environment is possible only if actual needs are met.

Administrative rules and regulations must conform to legislative policy. *SEC v. Chenery*, 318 U.S. 80 (1943),

Thomas v. Owens, 4 Maryland 189 (1853). In the ancient and authoritative case of *Thomas v. Owens* the court dealt with a suit to compel payment to a comptroller that the Maryland Constitution and law said he should receive. The court so ordered, noting that legally defined amounts of payment could not be reduced by agencies or officials any more than payments could be withheld. To the offending official the court at p. 225 of 4 Md., stated that, ". . . this fiat of the Supreme Will is not to be nullified by the mere *ipse dixit* of a mere ministerial officer." Nor should the legislative command to aid the individual need of needy dependent children and their parents be nullified by the arbitrary regulation of the State Board of Public Welfare.

A similar question of *ultra vires* administrative action was raised in *Staub v. Department of Public Welfare*, 198 P. 2d 817, (1948). The welfare department fixed a ceiling on the amount of assistance to a needy blind person even though that amount did not meet the recipient's needs as computed by the department itself. The court reviewed pertinent state statutes and regulations which required assistance to meet actual need. The court set aside the administrative action of the welfare department as "arbitrary and capricious" (at p. 825 of 198 P. 2d).

3. *The Maximum Grant Provisions of Rule 200 (VII) (1) Violates the Right of Marital Privacy of AFDC Recipients Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.*

Even if the Court rules that the maximum grant provision of Rule 200 (VII) 1. does not deny plaintiff the equal protection of the laws and does not violate Section 601, of 42 U.S.C., the maximum grant provision punishes AFDC recipients with large families in violation of their right of marital privacy. *Griswold v. Connecticut*, 381 U.S. 479 (1965). The state cannot require that recipients of public assistance relinquish a cherished constitutional right as a condition of eligibility. *Sherbert v. Verner*, 374 U.S. 398 (1963), *Thompson v. Shapiro*, 270 F. Supp. 331 (D. Conn. 1967). The condition of family size is completely irrele-

vant to the purposes of AFDC assistance. In welfare residency cases courts have invalidated provisions that condition assistance on the relinquishment of the constitutional right of interstate travel. *Thompson v. Shapiro, supra, Green v. Delaware, supra, Harrell v. Tobriner, supra.* In our hierarchy of constitutional values surely the marital right of procreation ranks just as high. And, its relinquishment as a condition to equal AFDC assistance is equally repugnant to the Constitution. The Supreme Court has recognized a penumbral right of marital privacy in *Griswold v. Connecticut, supra.* The right of procreation has traditionally been zealously safeguarded against governmental interference. *Skinner v. Oklahoma,* 316 U.S. 535 (1942), *Griswold v. Connecticut, supra.* The government must show a compelling interest in order to justify the infringement by Rule 200 VII 1. of this fundamental constitutional right. *Bates v. Little Rock,* 361 U.S. 516 (1960), *Sherbert v. Verner,* 374 U.S. 398 (1963). A money benefit cannot be denied a person solely because he exercised a constitutionally protected right. *Speiser v. Randall,* 357 U.S. 513 (1958), *Harman v. Forssenius,* 380 U.S. 528, 540 (1965), *Garrity v. New Jersey,* 385 U.S. 493 (1967), *Thompson v. Shapiro,* 270 F. Supp. 331 (D. Conn. 1967), *Sherbert v. Verner, supra.*

Rule 200 (VII) 1. punishes AFDC recipients who exercise their freedom of choosing a large family. A family unit that decides to have a large number of children is denied an amount of assistance equal to its actual needs. This denial penalizes the birth of additional children in family units of six or more persons by withholding adequate food and shelter, even though they may all have been born before the family was ever required to apply for welfare benefits. For example, all of the children of Mr. and Mrs. Gary were born before Mr. Gary was forced by his illness to apply for welfare benefits and they have not had additional children while receiving AFDC assistance. Likewise, Mrs. Williams' children were all born prior to her need for welfare benefits. Nevertheless, they receive less than adequate assistance for minimal food and shelter needs even though they chose a large family be-

fore receiving AFDC assistance. Thus, Rule 200 (VII) 1. intrudes on the right of marital privacy both before and during the period of AFDC assistance. It imposes an unconstitutional burden on the exercise of a constitutional right. *Sherbert v. Verner, supra, Collins v. State Board of Social Welfare,* 248 Iowa 269, 81 N.W. 2d 4 (1957). The right of plaintiffs as married persons, to freedom of choice in procreation and reproduction is firmly established, *Griswold v. Connecticut,* 381 U.S. 479 (1965). A state may not penalize the exercise of a constitutional right by withholding benefits. *Sherbert v. Verner, supra.* See also the case of *Thompson v. Shapiro,* 270 F. Supp. 331 (D. Conn. 1967), in which the court held that a state may not punish the exercise of the freedom to travel from state to state by imposing an arbitrary durational residence requirement as a condition of receiving public welfare benefits.

4. *The Maximum Grant Provision of Rule 200 (VII) (1) Violates the Right to Life Guaranteed to the Plaintiffs Under the Fifth and Fourteenth Amendments to the United States Constitution.*

In introducing the Fourteenth Amendment in the United States Senate in 1868 Senator Howard of Michigan, stated:

> "* * * The last two clauses of the first section of the amendment disable a state from depriving * * * any person, whoever he may be, of life, liberty, or property without due process of law, or from denying him the equal protection of the laws of the State. * * * It establishes equality before the law, and it gives to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty * * * Without this principle of equal justice to all men and equal protection under the shield of the law, there is no republican government and none that is really worth maintaining." William D. Guthrie, *Lectures on the 14th Article of Amendment To The Constitution of the United States,* Little, Brown and Co., 1898, p. 22.

In their often cited dissent Mr. Justice Field and Mr. Justice Strong, in the case of *Munn v. Illinois*, 94 U.S. 113, 142, defined the meaning of the term "life" as used in the 14th Amendment. They stated:

> "* * * by the term 'life', as here used, something more is meant then mere animal existence. The inhibition against its deprivation extends to all those limbs and facilities by which life is enjoyed. * * * The deprivation not only of life, but of whatever God has given to everyone with life, for its growth and enjoyment, is prohibited by the provision in question, if its efficacy be not frittered away by judicial decision."

The maximum grant provision of Rule 200, contained in the *Manual for the Department of Public Welfare* of the State of Maryland strikes at this most basic right of all, the right to life itself. It allows the Department of Public Welfare to determine the minimal subsistence needs of a family, and then to deny any family consisting of more than six units this minimal subsistence that the Department has itself defined to be necessary to life. The State of Maryland has established a system to provide for the necessities of life for the less fortunate members of its society, and then has placed in the balance "* * * all that makes life worth living." Cf *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922); *MacMullen v. City of Middletown*, 98 N.Y.S. 145, 150 (1906).

The tragic effect of the denial of the minimal subsistence benefit necessary for life was recently recognized in the report of the President's National Advisory Commission on Civil Disorders. In recognizing that the national average grant for welfare recipients was well below the poverty subsistence level of $3,335 for an urban family of four, the commission reported the effect of this inadequacy. It quoted the Advisory Council of Public Welfare, in stating that these inadequacies:

> "* * * are themselves a major source of such social evils as crime and juvenile delinquency, mental illness, illegitimacy, multi-generational dependency, slum en-

vironments, and the widely deplored climate of unrest, alienation, and discouragement among many groups in the population." *Report of the National Advisory Commission on Civil Disorders*, Bantam Books, 1968, p. 460.

This description is borne out in the instant cases. In her affidavit, the plaintiff, Linda Williams, states that she is constantly in debt because of her inability to meet the bare necessities of life, and that her children are presently without adequate shoes and clothing, and sometimes are required to stay home from school, because they do not have the necessary clothes to wear, especially in the wintertime. Her oldest daughter has just stopped going to school because she does not have the right kind of clothes to wear and is ashamed to go with what she has. Mrs. Williams states in her affidavit that if she could simply afford the necessities of life for her children, she could provide the kind of home life that they need to grow up to be "good people." She is constantly faced with the worry of having to break up her family because of her inability to meet her expenses.

The plaintiffs Junius Gary and his wife, Jeanette Gary, point to the same difficulties in their affidavits, concerning their children and their inability to clothe them properly for school. They also point out that in the wintertime their gas and electricity bill is always behind because of inadequate funds, which causes the gas and electricity to be shut off, leaving them without heat and light in their home. They are not even left with sufficient money to participate in the food stamp program which would allow them to purchase more nutritious food in greater quantity.

The situation that the Williams family and the Gary family are left in certainly violates that constitutional protection to a life of more than "mere animal existence". *Munn v. Illinois, supra*, at page 142. The deprivation here is of everything necessary to the growth and development of life.

Moreover, the administrative classification deprives the plaintiffs of other liberties secured by the due process

clause of the Fourteenth Amendment. Without the bare necessities of life the full exercise of freedom of speech, for example, is curtailed. As a result poor persons have not fully participated in the political processes. Cf. *United States v. Carolene Products Co.*, 304 U.S. 144, 147 (1938); *Hobson v. Hansen*, 269 F. Supp. 401, 513 (D.C. D.C. 1967). When a legislative classification has the effect of placing such additional burdens on a class of persons characterized by its extreme poverty and a practical inability to escape from the problems which the classification creates, the court gives close scrutiny and requires full justification before permitting such a result. *Harper v. Board of Elections*, 383 U.S. 663 (1966); *Hobson v. Hansen, supra* at 513. The right to life guaranteed by the Fourteenth Amendment recognizes that man is not a mere animal but a political and social creature as well. *Munn v. Illinois, supra.*

The City of Baltimore, in which the maximum grant regulation is most harshly felt, has itself acknowledged the complete inadequacy of the welfare grant. In submitting its application to the Department of Housing and Urban Development, for a grant to plan a comprehensive city demonstration program, the city, in its application, comments on the public welfare program as follows:

> Public welfare has the mission of providing a guarantee against economic poverty and related social deprivation. This guarantee means that public welfare should be available to all who need its protection, *be adequate to their needs consistent with the standards of this society for minimum decent living, and available as a matter of legal right.* (Emphasis supplied.)
>
> Public assistance payments are so low in Baltimore (as elsewhere in the United States) that the public welfare program itself can be termed a major source of poverty. Part III, Page 3 of 1 Planning Grant Application: Title 1 of the Demonstration Cities and Metropolitan Act of 1966.

The application concludes that:

> At this stage in the planning process, it does not appear that there are local laws, regulations or requirements which are glaringly inconsistent with the objectives of the program, *with the exception of public welfare laws,* and regulations which are primarily national and state laws and regulations. (Emphasis supplied.) Part III, Page 1 Planning Grant Application, Title 1 of the Demonstration Cities and Metropolitan Act of 1966.

It is apparent that the inadequate welfare grant which is magnified by the maximum grant regulation under attack here, could well cause the City of Baltimore serious difficulty in obtaining approval of its application for a model cities program, and thus further penalize the poor of the inner city.

CONCLUSION

John Adams, one of the founders of the American Republic once wrote: "The poor man's conscience is clear yet he is ashamed * * * he is not disapproved, censured or reproached; he is only not seen * * * to be wholly overlooked, and to know it, are intolerable."

The poor of our society, created and perpetuated by a welfare system which is characterized by inadequate grants and unrealistic regulations are no longer hidden, however. And as the court stated in the very recent case of *Edwards v. Habib:* opinion of May 17, 1968, (C.A. D.C. No. 20,883):

> As judges, "we cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men." *Ho Ak Kow v. Nunam,* C.C.D. Cal. 12 Fed. Cas. 252 (No. 6546) (1879).

This court cannot fail to take judicial notice of the vicious cycle of poverty created in our cities by the illegality and unfairness of our present welfare system. The

maximum grant provision, Rule 200 VII 1, creates an arbitrary classification that penalizes recipient family units of more than six persons. A classification based on family size is totally unrelated to the purpose of the AFDC program. According to the schedules of the defendant, State Department of Public Welfare, the amount of assistance granted to Plaintiff Linda Williams and her family, and plaintiffs Junius and Jeanette Gary and their family, is inadequate to sustain even a minimal standard of life. If this Honorable Court enjoins the operation of Rule 200 VII 1. plaintiffs could provide for the minimal subsistence needs of their families. For all of the foregoing reasons, plaintiffs respectfully request that their motion for a preliminary injunction and a temporary restraining order be granted to the plaintiffs and their children.

(Signatures and Certificate of Service.)

United States District Court for the District of Maryland

SUPPLEMENTARY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION.

I. *Legislative History and Administrative Interpretation Regarding the Maximum Grant Regulation.*

At the Court's request, counsel for Plaintiffs have reviewed the legislative history of the Social Security Act of 1935, Title IV, Grants to States for Aid and Services to Needy Families with Children. The Senate and House Reports since the initial enactment of the Act, and testimony that was given concerning the various enactments, as well as the administrative interpretation of the act, have been examined, to determine congressional concern, if any, with a "maximum grant" regulation, such as the one here under attack. The original act and the subsequent amendments to it, while they do not speak directly to the

problem of maximum grant regulations, contain considerable language which support the position that a maximum grant regulation, such as the one here under attack, does defeat the purposes for which the AFDC provisions of the Social Security Act, 42 USC, Sec. 601, et seq. were enacted. The language referred to is contained in the legislation itself, relevant reports from congressional committees connected with the promulgation of such legislation, HEW interpretation of the Social Security Act, and statements of members of Congress which appear in the congressional record. All of the sources support the position that the original congressional intent was clearly to meet the objectives of the AFDC provisions of the Social Security Act, as presently set forth in 42 USC Sec. 601, to "* * * strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection * * *" and to encourage "* * * the care of dependent children in their own homes or in the homes of relatives * * *."

Senate Report No. 628, 74th Congress (May 13, 1935) states: "Through cash grants adjusted to the *needs* of the family it is possible to keep young children with their mother in their own home, thus preventing the necessity of placing children in institutions. This is recognized by everyone to be the least expensive and altogether most desirable method for meeting the needs of these families that has yet been devised." (Emphasis supplied.) The Report goes on to note that because in many States the aid is inadequate to meet the objective of providing for the needs of families, there was a requirement for Federal aid to States.

The initial House version of the Social Security Act reiterated the viewpoint of the Senate committee. It emphasized "* * * it has long been recognized in this country that the best provision that can be made for families of this description (without a potential breadwinner) is public aid with respect to dependent children

in their own homes." House Report No. 615, 74th Congress (1935). (Emphasis supplied.)

Congressional testimony at the time of the consideration of the original Social Security Act adds considerably to the argument that a maximum grant regulation is inconsistent with the legislative intent of the Social Security Act. Senator Harrison of the Senate Committee on Finance, in explaining the House Ways and Means Committee's proposals of Title IV stated during the Senate debate: "* * * the provisions are not for general relief of poor children but are designed *to hold broken families together.*" (Emphasis supplied.) 79 Cong. Rec. 9269 (1935). Senator Wagner of Mississippi, the sponsor of the Social Security legislation, emphasized the need for flexibility in allocating funds, by commenting that: "* * * These grants will be extended primarily upon a matching basis in order to stimulate the States to action, but they will take full account of the special needs of those localities which are genuinely without capacity to help themselves." 79 Cong. Rec. 9286 (1935).

The present objectives of the Social Security Act were reaffirmed by the Act of August 1, 1956, which amended Title IV, by restating the purposes to include encouragement of care of dependent children in their own homes or in the homes of relatives with the same objective of "strengthening family life." August 1, 1956 c. 936 Title II, Section 312 (a), 70 Stat. 848.

Discussing the 1956 Amendments to Title IV of the Social Security Act, Senator Byrd, of the Senate Committee on Finance, stated that: "* * * Services that assist families and individuals to attain the maximum economic and personal independence of which they are capable provided a more satisfactory way of living for the recipients affected. To the extent that they can remove or ameliorate the causes of dependency they will decrease the time that assistance is needed." 102 Cong. Rec. 13034 (1956). In the same vein, Senator Magnuson proposed to liberalize the grants to dependent children "* * * to a level commensurate with other social security benefici-

aries * * *" (in order to alleviate) "* * * one of the significant deficiencies in our present social security legislation." 102 Cong. Rec. 13081, (1956). Similar sentiment was voiced by Representative Knox in commenting on the conference report of public assistance titles: "* * * I am gratified to observe that the amendments provided in the conference agreement to these public-assistance titles will insure to * * * our dependent children a liberalized *benefit level that more realistically recognizes the cost of even the barest subsistence today.* It should be recognized that people who are compelled to avail themselves of public assistance are entitled to an adequate benefit *commensurate with the costs of their living requirements in our present-day economy.*" (Emphasis supplied.) 102 Cong. Rec. 14835 (1956).

That an arbitrary maximum grant regulation on the amount of a grant to a family defeats the purposes of the Social Security Act, concerning AFDC, is further highlighted by examining the 1965 Amendment to the Act, subsection (a)(1) public law 89-97, Sec. 122, 401 (c), which increased the share of the average monthly assistance payment from 14/17 of the first $17 of assistance to a recipient, to 5/6 of the first $18 of such payment, thus raising the ceiling for federal participation from $30 to $32 a month *per recipient.* See 42 U.S.C.A. Sec. 603 (1967 Com. Annual Pocket Part) and Annotation thereto, concerning the 1965 amendment.

The purpose of the 1965 amendment was to improve and expand the public assistance program by increasing the federal matching share for cash payments for the needy aged, blind, disabled and families with dependent children. 1965 U.S. Code Cong. and Adm. News, at page 1944. It is of course noted that the method of improving and expanding the assistance to families with dependent children was by increasing the matching funds from $30 to $32 *per recipient,* not by giving an increase to the family as a whole. Such a method of increase makes sense when one finds that the amount of payments is based on the individual's need and on the cost for meeting that need. Thus, for the State arbitrarily to set a maximum grant for

family, without regard to the number of dependent children in the family, patently defeats the very purpose of the 1965 amendment and all the prior provisions of the Social Security Act which compute the amount of payment to the States on the basis of the number of recipients eligible for assistance.

This viewpoint is further reinforced by the 1967 amendment to the Social Security Act, Public Law 90-248, 90th Congress, H.R. 12080. While not specifically passing upon the matter of meeting the full needs of welfare recipients, the amendment does require in Section 402 (a)(23), that the amounts used by the State to determine the needs of *individuals* "* * * will have been adjusted to reflect fully changes in living costs, since such amounts were established * * *". It also requires adjustments of any maximums imposed by a State on the amount of aid paid to families in proportion to the rise in living cost.

Thus for the State arbitrarily to set a maximum grant per family, without regard to the number of dependent children in the family, patently defeats the very purpose of the Social Security Act, which has consistently computed the amount of payment to the State on the number of recipients eligible for assistance, and has amended the Act so as to meet the rise in the cost of living be determining how such rise has effected the needs of *individuals*.

In the testimony that was given, concerning the 1967 amendments to the Act, Wilbur J. Cohen, the present Secretary, Department of Health, Education and Welfare, had an interesting exchange with Senator Ribicoff, a member of the committee on finance, concerning the effect of failure to meet minimal needs which directly results from maximum grant regulations:

> Senator Ribicoff: I know, but you take all that into account in the standards that are being set. What they are receiving is not just a question of the amount they receive from the welfare agencies, you take into account all they receive. What happens to the child or the adult who receives so much less than what you

consider or what is considered a proper standard? How do they live?

Mr. Cohen: They have to live on the lesser amount.

Senator Ribicoff: How do they live?

Mr. Cohen: They have to cut back on their food and clothing and other needs to live on the amount that the state gives them.

Senator Ribicoff: Well, is not a study made or do not you know what happens to these people? I mean just what is happening to them?

Mr. Cohen: Well, I think that the evidence shows — I do not have it immediately before me — that many of these children and these families grow up without adequate food, without adequate medical care, and certainly their whole aspirations for improving in their education status are stunted, and I think that the evidence from the State administrators when you hear them will bear that conclusion out.

Secretary Gardner: It shows up most clearly, I think, in the medical data. You will find a higher incidence of just about every kind of medical disorder and physical handicap in these youngsters — malnutrition and everything else.

Senator Ribicoff: Well, in looking to the cost to society ultimately, the people who are below standard cause a greater drain eventually upon what the society has to pay out in every conceivable way, is that not right?

Senator Gardner: No question about that, Senator.

Hearings before the Committee on Finance, United States Senate 90th Congress, First Session on H.R. 12080, August 22, 1967.

In initially establishing the Act, Congress recognized that in the long run the least expensive and altogether most desirable method of providing for needy families was

cash grants adjusted to individual needs, and such failure, which directly results from a maximum grant regulation, in regard to large families, not only defeats the very purposes of the Act, but also may well result in a greater expense to the State, apart from the tragic cost in human resources to society and to the individuals in question.

An examination of what the Department of Health, Education and Welfare has said in this regard is also illuminating. The policies and standards for the public assistance program as administered by the states are set forth in the Handbook of Public Assistance Administration and related releases (hereinafter referred to as Handbook) issued by the Department. This Handbook describes its functions as follows (Pt. 1, Sec. 4210):

> "* * * The policies and standards are set forth in the form of interpretations of the Social Security Act, requirements for State plans, criteria for the administration of State plans, conditions for Federal financial participation, and recommendations for improving public assistance programs and administration * * * The Handbook constitutes the principal means of informing the States regarding official policies and standards * * *.
>
> * * * * * *
>
> 1. The Federal requirements described in this Handbook are based on the pertinent provisions of the Social Security Act, and *on the intent and purpose of the law as identified in official statements and as derived from the history of the legislation and from other available evidence.*" (emphasis supplied).

Thus, in the Handbook of Public Assistance Administration, Supplement A, Pt. II — A — 3000, it is stated:

> "* * * Sufficient funds should be made available by the State to meet need in full *in accordance with the State standards of need* and to assure that for the established State fiscal period, there will be continuity of operations under the plan throughout the State." (emphasis supplied).

HEW, in another section, Pt. IV, Sec. 42231, of the Handbook goes on to actually define what is meant by the phrase "Strengthening Family Life" which appears in 42 U.S.C. §602:

> Strengthening family life means sustaining and increasing the ability of parents to carry their parental responsibilities in the care, protection, and support of their children; and to sustain and increase the capacities of children to carry their appropriate role in total family life, to the end that children may have a home life conductive to healthy physical, emotional, and social growth and development. Families have the right and responsibility to provide for adequate health care, education, and vocational training in accordance with the capacities of their children; and to provide for their participation in community life.

Thus, while Congress has not spoken definitively, concerning its viewpoint of the effect of maximum grants on the purposes of the Social Security Act, statements contained in the Congressional Reports and testimony at Congressional hearing, as well as the administrative interpretation in the Handbook, certainly support the conclusion that accomplishment of the primary purpose of aid under Title IV, the "strengthening of family life through services and financial aid," can only be met adequately by meeting all needs of all individuals in all families, whether they be large or small families. Nowhere in the Social Security Act and its various amendments or in the Handbook, is there any justification for a discrimination between large and small families. The maximum grant regulation here in question defeats the very purposes of the Social Security Act, "to encourage the care of dependent children in their own homes" by establishment of such a regulation.

In the very recent case of *King v. Smith*, No. 949, October term, 1967, 36 L.W. 4703, the Supreme Court opinion includes extensive research on the Social Security Act, insofar as it touched upon the Alabama welfare regulation dealing with the so-called "substitute father."

While the regulation there is not related to the maximum grant regulation here under attack, there was a recognition of the importance of the legislative purposes of the act as further interpreted by the Handbook, which is frequently cited. There, as in this case, the Supreme Court found that "* * * the regulation itself is unrelated to need, because the actual financial situation of the family is irrelevant in determining the existence of a substitute father." 36 L.W. 4706.

The Court went on to state, at 36 L.W. 4709:

> "A contrary view would require us to assume that Congress, at the same time that it intended to provide programs for the economic security and protection of *all* children, also intended arbitrarily to leave one class of destitute children entirely without meaningful protection. Children who are told, as Alabama has told these appellees, to look for their food to a man who is not in the least obliged to support them are without meaningful protection. Such an interpretation of congressional intent would be most unreasonable, and we decline to adopt it." (Court's emphasis).

The Court concluded that the purpose of the AFDC program was to provide economic security and services to needy children who lost the support of a "breadwinner". Parents of a large family are required to completely ignore children beyond the sixth individual in a family, which is humanly inconceivable, or to spread already inadequate resources thinner. The effect of the maximum grant regulation, as in the *King v. Smith* case, is to arbitrarily leave one class of destitute children entirely without meaningful protection, and is equally unreasonable in view of the purposes of the Act.

II. *Supplemental Argument That the Maximum Grant Provision of Rule 200 VII 1. Violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.*

Plaintiffs contend that there is enough evidence on Congressional intent and administrative interpretation to war-

rant a finding by the Court that Rule 200 VII 1. violates Section 601, 42 U.S.C. the Federal Social Security Act, and is the very antithesis of the purposes of the Act. However, even if the Court should not reach this conclusion, the regulation in question must still fall, as a clear violation of plaintiffs' constitutional rights under the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

Plaintiffs have already filed an extensive memorandum in support of their argument on this point. By way of further supplementation of that memorandum, plaintiffs maintain that the application of the maximum grant to children of large families is a denial of equal benefits to them. "* * * on a wholly arbitrary standard or on a consideration that offends the dictates of reason." *Schwarg v. Bd. of Bar Examiners*, 358 U.S. 232, 249 (Frankfurter, J., concurring). The children of the plaintiffs and all children of families belonging to the class here represented are thus denied rights on the basis of a status which they are powerless to influence, i.e., that they are members of a family of more than six persons.

The very recent case of *Anderson, et al. v. Schaefer*, Civil Action No. 10443, (D.C. N.D. Ga. April 4, 1968) is close on the point to the instant case. For the Court's convenience a copy of the opinion and order, findings of fact and conclusions of law are attached hereto. In that case, the state of Georgia promulgated an "employable mother" regulation which discriminated between AFDC recipients in the calculation of their grants on the basis of the sources of their income. Thus, under the regulation a family whose income resulted from employment would in most cases receive less in AFDC supplementary benefits than a person whose income came from other sources.

The Court in *Anderson*, found that the regulation bore "* * * no reasonable relationship to plaintiffs' financial needs, and *therefore to the purposes of the Social Security Act* * * *". (emphasis supplied). We would submit that the regulation here challenged bears even less reasonable a relationship to the plaintiffs' needs, arbitrarily discrmi-

nating against the child or children of a large family. The members of the Gary family receive assistance at the rate of $25.00 per person although according to Maryland's minimal standards of subsistence and shelter they should receive assistance at the rate of $33.15 per person. Likewise, the members of the Williams' family receive assistance at the rate of $27.78 although minimal subsistence standards calculated for them by the defendant call for payments of $35.71 per person. A family of six persons, unhampered by the maximum grant regulation receives assistance at the rate of $38.50 per person, the full amount calculated to be their minimal subsistence needs.

Thus, as in the *Anderson* case, the maximum grant regulation penalizes the plaintiffs on a basis which "bears no reasonable relationship to their financial needs and therefore to the purposes of the Social Security Act." *Anderson v. Schaefer, supra.*

The Court in *Anderson* held that the defendants shall not give any force or effect to the regulation in question. It is respectfully submitted that the court should likewise enjoin any enforcement of the maximum grant regulation herein under attack.

(Signatures and Certificate of Service.)

United States District Court for the District of Maryland

AMENDED MOTION TO DISMISS

Now come the Defendants Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester B. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles D. Harris, members of the State Board of Public Welfare, by Francis B. Burch, Attorney General, and Frank A. DeCosta, Jr., Assistant Attorney General, their attorneys, and by

way of an Amended Motion to Dismiss, by leave of this Court, respectfully say:

1. That this Court is without jurisdiction by reason of the Eleventh Amendment to the United States Constitution because the Plaintiffs, residents of the State of Maryland, assert a monetary claim against the State of Maryland to which it has not consented.

2. That the Governor of the State of Maryland and/or the President of the Maryland Senate and the Speaker of the House of Delegates are indispensable party defendants under Rule 19 (a) and (b) of the Federal Rules of Civil Procedure and their joinder will divest this Court of jurisdiction.

3. That this Court should abstain from exercising jurisdiction because on the face of the Complaint there is alleged to be a State statute susceptible of construction by the State courts which would avoid or modify the constitutional question raised.

4. That the Complaint does not raise a substantial constitutional question nor state a claim upon which relief can be granted, because "poor relief" is a State question and there is no constitutional right thereto.

Wherefore, Defendants request that an Order be entered dismissing the Complaint in accordance herewith.

(Signatures and Certificate of Service.)

United States District Court for the District of Maryland

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' AMENDED MOTION TO DISMISS

ARGUMENT

I.

Eleventh Amendment

The Plaintiffs do not merely contend that the Maryland Department of Public Welfare's maximum grant regulation

(Maryland Manual of the Department of Public Welfare, Part II, Rule 200, Section VII 1) of $250 is violative of the State and Federal Enabling Acts [Article 88A, Sections 44A and 49, Annotated Code of Maryland (1964 Replacement Volume), and 42 U.S.C., Sections 601, *et seq.*] and the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, but they additionally contend that the Williams family (Plaintiffs herein) is entitled to an additional $46.15 more per month in AFDC benefits from the State (Paragraph IX A of the Complaint) and that the Gary family (Plaintiffs herein) is entitled to an additional $81.50 per month in AFDC benefits from the State (Paragraph IX B of the Complaint).

That the Plaintiffs are really seeking a monetary judgment against the State becomes even clearer from the nature of the specific relief requested. They request a preliminary and permanent injunction:

> "(a) prohibiting, restraining and enjoining defendants . . . from enforcing, applying or implementing said maximum grant regulations".

Obviously, if the State may not apply its $250 maximum grant regulation, the next step becomes obvious:

> "(b) prohibiting payments of assistance which are less than the minimum subsistence and shelter needs as established by the Maryland Board of Public Welfare, and ordering and requiring defendants to make welfare payments to plaintiffs . . . in accordance with minimum subsistence and shelter needs as established by the Maryland State Board of Public Welfare".

In the case of the Williams family this would amount to an affirmative award of $46.15, and in the case of the Gary family this would amount to an affirmative award of $81.50. Not content to rest with (a) and (b), Plaintiffs further clarify the true nature of their monetary claim by requesting this Court to

> (c) order and require "defendants . . . to furnish AFDC assistance to Plaintiffs and others similarly

situated without regard to said maximum grant regulations".

The essence of the Plaintiffs' claim, then, is that they are entitled to monetary relief against a State by virtue of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.*

The Eleventh Amendment to the United States Constitution provides:

> "The Judicial power to the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

In *Hans v. Louisiana*, 134 U.S. 1 (1890), the Supreme Court construed the Eleventh Amendment to prohibit suits in federal courts against a state for a monetary judgment by one of the state's own citizens unless the state itself consents. This constitutional doctrine has been reaffirmed since *Hans*. *Great Northern Life Insurance Co. v. Read*, 322 U.S. 47, 51-52 (1944).

The present claim for monetary relief may not, by virtue of the Eleventh Amendment, be maintained in this Court since it is one to which the judicial power of the United States shall not extend.

II.

Joinder of Indispensable Parties

The Plaintiffs in this class action are essentially asking that the State provide additional money in the budget of the Maryland State Department of Public Welfare for increased grants under AFDC. That will be the ultimate

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* More alarmingly, their assertion, when cut to the "bare bones", is that they are entitled to "poor relief" as a matter of "right" by virtue of the same constitutional provision.

effect, if grants beyond the $250 maximum are constitutionally required.*

Under Article III, Section 52(3) of the Maryland Constitution, the Governor is charged with the ultimate responsibility for the preparation of the budget of the State Department of Public Welfare. The Governor may reduce or exclude from his budget an appropriation requested by one of his executive departments. Moreover, the General Assembly may only reduce executive appropriations included in the budget as submitted. However, the General Assembly may appropriate additional moneys by way of a Supplementary Appropriation Bill, provided that a revenue source by way of a tax is established to support the Supplementary Appropriation Bill. Maryland Constitution, Article III, Section 52(8).

Further, the State Department of Public Welfare does not have the authority, within its fiscal year 1968 or 1969 budget, to transfer funds from one program [i.e., Aid to the Blind (AB), Old Age Assistance (OAA), or Aid to the Permanently and Totally Disabled (APTD)] to AFDC, in the absence of a legislative amendment, without obtaining the approval of the Governor. Article 15A, Section 8 of the Maryland Code (1968 Replacement Volume), in pertinent subsections, provides:

> "(a) *What constitutes initial plan of disbursement.*—The items and amounts making up the appropriation in any budget bill, supplementary appropriation bill or bond issue shall represent the initial plan of disbursement and apportionment of the appropriations of which they are part. Each appropriation shall be paid out only in accordance with the schedule therefor, unless such schedule be amended, within the limits of such appropriation, in the following manner: . . ."
>
> * * * * * *

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*The Department estimates that there are approximately 2,300 grants which would have to be increased if this class action prevails, requiring increased grants for AFDC of $957,600, neither appropriated in the present 1968 fiscal year budget nor appropriated in the 1969 fiscal year budget.

"(e) *Amended schedules submitted by departments, etc., and approved by Governor; amendments made or approved by Governor to be reported to General Assembly.* — Any department, board, commission, officer or institution may, at any time submit in writing to the Governor an amended schedule for the disbursement and apportionment of the appropriations made to it by him. If the Governor shall approve such amended schedule, he shall transmit the same, with the certificate of approval, to the Comptroller and thereafter, such appropriation shall be paid out in accordance with said amended schedule, subject to the provisions of subsection (f). Any such amended schedule so submitted to the Governor may be withdrawn at any time before the Governor has acted thereon. Any amended schedule approved by the Governor may be again amended at any time in like manner and with like effect. All amendments and schedules made or approved by the Governor shall be reported by him to the next session of the General Assembly."

In order to achieve the fiscal scheme contemplated by the Plaintiffs, namely, increasing the AFDC grants by $957,600, the Governor and/or the President of the Maryland Senate and the Speaker of the House of Delegates are indispensable parties.

Rule 19(a) of the Federal Rules of Civil Procedure, in pertinent part, provides:

"A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party if (1) in his absence complete relief cannot be accorded among those already parties . . . If he has not been so joined, the court shall order that he be made a party."

Rule 19(b) of the Federal Rules of Civil Procedure provides:

"If a person as described in subdivision (a) (1) (2) hereof cannot be made a party, the court shall de-

termine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder."

Rule 19(a) is satisfied because, in the absence of the Governor and/or the President of the Maryland Senate and the Speaker of the House of Delegates being made a party, "complete relief cannot be accorded among those already parties". Rule 19(b) is satisfied because each is a State official charged with statutory responsibilities which would be affected by this action and the relief prayed by the Plaintiffs. These State officials are, therefore, "indispensable" parties within the meaning of Rule 19 (a) and (b).

Since the Plaintiffs' action would be essentially asking for monetary relief against these State officials, an increase in the AFDC grants beyond the present $250 maximum, their joinder could divest this Court of jurisdiction because of the Eleventh Amendment as construed in *Hans v. Louisiana, supra,* and *Great Northern Life Insurance Co. v. Read, supra.*

These additional defendants are, therefore, "indispensable" parties whose joinder would divest this Court of jurisdiction and (1) any judgment rendered in the absence of these parties will be prejudicial to them; (2) in shaping relief, a monetary award to the Plaintiffs against the State will necessarily result; (3) in the absence of the additional defendants, relief will not be adequate because of the fiscal scheme established by State law; and (4) the Maryland courts have jurisdiction to entertain the Plaintiffs'

action. These factors being present, Rule 19(b) authorizes this Court to dismiss the Complaint under these circumstances.

III.

Abstention

The Complaint states:

> "This is a proceeding for injunction enjoining the defendants from continuing to enforce or otherwise apply its 'maximum grant' regulation. This is also a proceeding for a declaratory judgment that defendants' 'maximum grant' regulation:
>
> (A) Contravenes the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States; and
>
> (B) Is contrary to the purposes of the federal and state Aid to Families with Dependent Children program as expressed by the Federal Social Security Act (42 U.S.C. Sections 601 et seq.) and the statutes of the State of Maryland (Article 88A, Sections 44A and 49, Ann. Code of Md., 1957 ed.)."

On the face of the Complaint the Plaintiffs allege the narrowly limited "special circumstance" which permits this Court to decline to exercise jurisdiction, namely, that the "maximum grant" regulation promulgated by the Maryland State Board of Public Welfare "[i]s contrary . . . to the statutes of the State of Maryland".

In *Harrison v. NAACP*, 360 U.S. 167 (1959), the Supreme Court, in approving the District Court's declension of jurisdiction, held that abstention is properly exercised when a state statute is susceptible to a construction by the state courts that would avoid or modify the constitutional question. This principle has been recently reaffirmed by the Supreme Court in *Zwicker v. Koota*, 36 L.W. 4041, 4043 (1967), although abstention was held to have been improperly applied in that case because it was conceded there that a construction of the state statute would not render unnecessary a decision of the constitutional chal-

lenge. In the present case, however, the Plaintiffs themselves assert that the "maximum grant" is inconsistent with a state statute. If this is true, as the Plaintiffs claim, such a construction would avoid the constitutional question. Regard for the interest and sovereignty of the state and reluctance needlessly to adjudicate constitutional issues are appropriate considerations by a federal District Court in the ultimate determination of whether to exercise jurisdiction, where the *Harrison* "special circumstance" is present. In this connection, it is interesting to note that recently in *King v. Smith*, 36 L.W. 4703 (1968), the Supreme Court struck down Alabama's "substitute father" regulation which denied AFDC benefits on statutory rather than the asserted constitutional grounds.

Moreover, there is every danger that a federal decision on the merits of the constitutional claim will disrupt an entire regulatory scheme, not only in Maryland where appropriations were made for both the fiscal year budgets 1968 and 1969 with the $250 "maximum grant" regulation for AFDC in mind but also by implication in one-third of all states participating in AFDC *categorical assistance* programs under the Social Security Act. One-third of all states fix the maximum amount of grants to families with dependent children.* The Supreme Court has observed without disapproval that:

> "The level of benefits is within the State's discretion, but the Federal Government's contribution is a varying percentage of the total AFDC expenditures within each State [citations omitted]. The benefit levels vary greatly from state to state. For example, in May, 1967, the average payment to a family under AFDC was about $224 in New Jersey, $221 in New York, $39 in Mississippi, $20 in Puerto Rico, and $53 in Alabama [citations omitted]." *King v. Smith*, 36 L.W. 4703, 4706 (1968).

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* See Sparer, *Social Welfare Law Testing*, 12 Prac. Law 13, 21 (1966). In Georgia the maximum grants in AFDC are $36 for the first child, $27 for each additional child up to and not to exceed $144 per family per month. Ga. Manual of Public Assistance, Part III, Section VII, at G-37 (1966).

The "special circumstances" doctrine of *Harrison* has not been tampered with in *Damico v. California*, 389 U.S. 416 (1967). In *Damico* the question presented was whether a three-judge court properly declined to exercise jurisdiction to hear a Section 1983 claim upon the doctrine of abstention because the plaintiff had failed to exhaust state administrative remedies. No such ground is asserted in the present case.

Finally, the doctrine of abstention is properly raised by a Motion to Dismiss (compare *Government & Civic Employees Organizing Committee, CIO v. Windsor*, 353 U.S. 364; *Shipman v. DuPre*, 339 U.S. 321, with *Stainback v. Mo Hock Ke Lok Po*, 336 U.S. 368) although it may be the better practice to retain jurisdiction pending adjudication in the state court. See Note, "Federal Question Abstention: Justice Frankfurter's Doctrine in an Activist Era", 80 Harv. L. Rev. 604 (1967).

IV.

"Poor Relief" is a state question and there is no constitutional right to a level of benefits beyond that provided by the states.

Public welfare takes the forms of *general assistance* and *categorical assistance* in the United States. General assistance is financed by local and state governments. Although programs of this sort provided the only public aid available prior to the Depression, the now furnish only a small portion of public welfare funds. Categorical assistance is today the predominant form of public welfare. Under this scheme, state programs which are supported by grants-in-aid from the federal government pursuant to the Social Security Act administer aid to specific categories of needy individuals and families. The federal statute recognizes four major categories: Old Age Assistance (OAA), Aid to the Blind (AB), Aid to the Permanently and Totally Disabled (APTD), and Aid to Families with Dependent Children (AFDC).

State participation is not required by the federal statute. States may choose not to apply for federal assistance or

may join in some, but not all, of the programs. In order to receive federal funds, however, state plans must be submitted for the approval of the Secretary of Health, Education and Welfare. Although the establishment of criteria for need and other factors of eligibility is left largely to the states, the plans must meet certain basic qualifications under the act and must conform to the rules and regulations promulgated by the Secretary.

The state plans themselves are usually devised pursuant to general enabling legislation empowering a state agency to promulgate rules and regulations for administering the federal program. The Maryland AFDC program is legislatively authorized and detailed in Article 88A, Sections 44A, *et seq.*, Annotated Code of Maryland (1964 Replacement Volume).

Maryland, together with every other state, Puerto Rico, the Virgin Islands, the District of Columbia and Guam, participates in the Federal Government's AFDC program, which was established by the Social Security Act of 1935. *King v. Smith*, 36 L.W. 4703 (1968). The category singled out for welfare assistance by AFDC is the "dependent child", who is defined in Section 406 of the Act, 49 Stat. 629 (1935), as amended, 42 U.S.C. Section 606(a), as an age-qualified "needy child . . . who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with" any one of several listed relatives.

The Maryland State Department of Public Welfare, with respect to AFDC grants, promulgated the following regulation:

> "The amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:
>
> A. For local departments under any 'Plan A' of Shelter Schedule B $250. For local departments under any 'Plan B' of Shelter Schedule B $250, except that:

a. If the requirements of a child over 18 are included to enable him to complete high school or training for employment (III-3, C), the grant may exceed the minimum by the amount of such child's needs.

b. If the resource of support is paid as a refund (V-2, F), the grant may exceed the maximum by an amount of such refund. This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

B. A grant is subject to any limitation established by existing rule on insufficient funds." Maryland Manual of Department of Public Welfare, Part II, Rule 200, Section VII.

The Department has established schedules by which they determine the actual needs of a particular family under AFDC based upon standards established by the Department. When those standards are applied to the Plaintiffs, the Williams family, the schedules show that they "need" $296.15. When those standards are applied to the Plaintiffs, the Gary family, the schedules show that they "need" $331.50. However, in each case the "maximum grant" regulation, set out above, only authorizes a grant of $250.

The Plaintiffs contend that because of this effect the "maximum grant" regulation is an impermissible statewide regulation under the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution and inconsistent with both the State and Federal enabling statutes.

Among other hardships wrought by the "maximum grant" regulation, the Plaintiffs assert that the $250 limitation destroys family unity and establishes an unrealistic standard of living inconsistent with the Department's own notions of what is "needed". Plaintiffs apparently ignore the very practical reason for the limitation, namely, that it is a legitimate way of allocating the State's limited resources available for AFDC assistance.

In another context, with respect to recoveries by AFDC recipients, a federal court has observed:

". . . The plain flaw that nonetheless destroys plaintiffs' thesis is that it is brought to the wrong forum. Plaintiffs' complaints might move us to vote for changes if we sat as state legislators. But they do not approach the showing of irrationality or arbitrariness warranting exercise of the limited veto power of the federal judiciary under the Fourteenth Amendment.

"Against plaintiffs' views, as defendants point out, there are arguments of policy which can scarcely be dismissed as frivolous, whether or not we would find them convincing if the judgments of policy were for us. The State is entitled, they note, to consider relative need and available resources in distributing its limited welfare funds." *Snell v. Wayman*, 281 F. Supp. 853, 862 (D.C. S.D., N.Y., 1968).

* * * * * *

"We sketch these countervailing points for the single purpose of indicating what seems plain to us — that we could hold the statutes unconstitutional only if we were invested by the 'convenient vagueness' of the Due Process Clause with a power, long since denied us, to invalidate state laws 'because they may be unwise, improvident, or out of harmony with a particular school of thought'." (Citations omitted.)

"To be sure, cases like those just cited reflect mainly the recognition of our highest Court during the last thirty years or so that it does not sit as final arbiter of state social policies affecting matters of business and industrial regulation. . . ." *Id.*

* * * * * *

"And, it is said, the subject welfare administration, where the primitive needs of desperate people are at stake, is altogether different. There is a difference, certainly, but not a constitutional one — not any that commissions us to tell those the people elect how they

should resolve competing values of the kind here in question.

"It is appropriate from time to time to appreciate the full measure and continued vitality of what Mr. Justice Holmes meant when he said: 'The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics.' Lochner v. State of New York, 198 U.S. 45, 75, 25 S. Ct. 539, 546, 49 L. Ed. 937 (1905) (dissenting). Now that his dissenting thought has won the day, we ought not to trivialize the achievement by viewing it only as the interment of Spencer's social doctrines. The principle applies to the social philosophers that most of us, including judges, find more persuasive than Spencer. If we were free to enforce what we may modestly deem our more enlightened view, we might seriously consider the changes plaintiffs propose. But we have no such power, and it is better in the end for everyone that this is so.

"We were reminded only the other day, though the context was different, of the basic principle: 'The purpose of the Constitution and the Bill of Rights, unlike more recent models promoting a welfare state, was to take government off the backs of people.' *Schneider v. Smith*, 309 U.S. 17, 25, 88 S. Ct. 682, 19 L. Ed. 2d 799 (1968). The principle counsels that it is not for federal judges to be 'liberal' or 'conservative' in advancing and ordering measures which undoubtedly relate to basic matters of human decency and welfare. The constricted test in this forum is one of minimal rationality. By that test plaintiffs' due process argument must fail." *Id.* at 863.

* * * * * *

"Like the life of the law generally, the Fourteenth Amendment was not designed as an exercise in logic. It is ancient learning by now that a classification meets the equal protection test 'if it is practical, and is not reviewable unless palpably arbitrary'. Orient Insurance Co. v. Daggs, 172 U.S. 557, 562, 19 S. Ct. 281, 282, 48 L. Ed. 552 (1869). If the classification has 'some

reasonable basis', it cannot be held offensive to the Equal Protection Clause 'because it is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 31 S. Ct. 337, 340, 55 L. Ed. 369 (1911). 'The problems of government are practical ones and may justify, if they do not require, rough accommodations — illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70, 33 S. Ct. 441, 443, 57 L. Ed. 730 (1913)." *Id.* at 865.

The Supreme Court, considering categorical assistance programs under AFDC among the states, has observed:

". . . There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." *King v. Smith*, 36 L.W. 4703, 4706 (1968).

The Supreme Court further noted that:

"HEW's Handbook, in Pt. IV, § 3120, provides that: 'A needy individual . . . [under AFDC] is one who does not have income and resources sufficient to assure economic security, *the standard of which must be defined by each State.* The act recognizes that *the standard so defined depends upon the conditions existing in each State.*' (Emphasis added.) The legislative history of the Act also makes clear that the States have power to determine who is 'needy' for purposes of AFDC. Thus the Reports of the House Ways and Means Committee and Senate Finance Committee make clear that the States are free to impose eligibility requirements as to 'means'. H. R. Rep. No. 615, 74th Cong., 1st Sess., 24 (1935); S. Rep. No. 628, 74th Cong., 1st Sess., 36 (1935). The floor debates corroborate that this was Congress' intent. For example, Representative Vinson explained that 'need is to be determined under the State law.' 79 Cong. Rec. 5471 (1935)." *Id.* at 4706.

For these reasons the constitutional question is insubstantial and does not state a claim for which relief can be granted.

CONCLUSION

For the reasons set out above, together or alternatively, the Complaint should be dismissed.

(Signatures and Certificate of Service.)

United States District Court for the District of Maryland

ANSWER

Now come Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester S. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles B. Harris, members of the State Board of Public Welfare, by Francis B. Burch, Attorney General and Frank A. DeCosta, Jr., Assistant Attorney General, their attorneys, and for answer to the Complaint filed herein respectfully say:

First Defense

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

Second Defense

Poor relief is a state not a federal question.

Third Defense

1. The Defendants admit the allegations contained in the first and second paragraphs of Section I of the Complaint and in Sections III, IV, V, VII and X thereof.

2. The Defendants deny the allegations contained in Sections II, VI, VIII, IX, XI, XII, XIII and XIV of said Complaint.

Wherefore, having fully answered said Complaint, Defendants pray that the same be dismissed.

(Signatures and Certificate of Service.)

United States District Court for the District of Maryland

STIPULATION OF FACTS

Come Now the Plaintiffs and Defendants by their undersigned attorneys and respectfully submit to the Court stipulations of fact which are intended to narrow the issues and save time of the Court.

Other than as admitted in the pleadings or as such admissions may be changed from the pleadings, the parties respectfully show to the Court the following agreement as to facts and issues:

1. But for the maximum grant provision of Rule 200, Section VII 1 of the Maryland Manual of the Department of Public Welfare, Part II, the schedules for determining the cost of subsistence needs issued by the Maryland State Department of Public Welfare (attached to the Complaint as Exhibits B^1, B^8) would entitle Plaintiff Linda Williams and her eight (8) children to receive a grant of $311.15 per month and entitle the Gary family to receive $331.50 per month. (Attached hereto in the *Computation of the Amount of the Grant* as Stipulation Exhibits 1 and 2). The maximum grant provision of $250 per month is less than the minimum subsistence needs of Plaintiffs Linda Williams' family and the Gary family when computed according to the above schedules of the Maryland State Department of Public Welfare. The maximum grant provision is less than the minimum subsistence needs of any eligible AFDC family unit consisting of seven persons or more,

since their minimum needs when computed by the same schedules exceed the maximum payment of $250 per month. The larger the eligible family the greater the disparity between the maximum grant and the minimum subsistence needs.

2. Linda Williams, one of the Plaintiff's is the 33 year old mother of eight children, ages 16, 14, 11, 10, 9, 7, 6 and 4 years old. She is now living at 928 East Eager Street, Baltimore, Maryland in a six-room house, containing three bedrooms.

The Plaintiff, Linda Williams is paying $69.00 a month rent, and in addition to this rent, she must also supply her home with coal heat.

The Plaintiff, Linda Williams, has been on welfare (AFDC) ever since her husband, William Williams, left her soon after their youngest child, Wanda, was born, more than three years ago.

Since her husband left, Linda Williams has had no means of support other than the $250.00 which she receives monthly from the Department of Public Welfare. Because there are no relatives to assist her with the care of her children, it is necessary that she stay home with her children at all times to care for them. She is also not able to add to her welfare payments in any way because of a serious breast condition which she has, which has caused her to have about five operations.

After payment of her monthly rent, and the cost for heating her home with coal, she has less than $175 per month to feed and clothe her family, and to provide them with the other necessities of life. She is constantly forced to buy clothes and shoes for her children on credit, and she is already in serious debt. Most of her children need shoes right now, and they sometimes stay home from school, especially in the wintertime, because they do not have the necessary clothes to wear.

She is trying to keep all of her family together with her and to make up for the fact that their father is not at home with them. This is very hard for her to do because

of her continuing lack of money. If Mrs. Williams had enough money to pay for her family's needs, she could provide a better home life for her family.

She has begun buying food stamps which are some help but which still leave her with insufficient money for her other daily needs. Sometimes, she doesn't have enough money to buy the amount of stamps required to participate in the program. Unless she can get some financial help, she will have a difficult time supporting her family.

Junius Gary, is one of the Plaintiffs in this case. He is 38 years old and was married to Jeanette Gary in October, 1952, in Baltimore City. He is the father of eight children, ages 11, 10, 9, 8, 7, 6, 5 and 4 years old. He is now living at 1402 Ashland Avenue, Baltimore, Maryland, in a row house which he and his wife, Jeanette Gary rent for the sum of $75 a month. Besides paying this rent, he must also heat this home, and there is no central heating system. He must heat each room separately with gas space heaters all over the house. This is very expensive and makes his gas and electric bill very high, sometimes as high as $50 a month. He needs a large house to provide room for his eight children.

Mr. Gary has served two years in the United States Army, from 1953 until 1955, and was honorably discharged from the Army. After his active service was completed he began working as a truck driver and chauffeur, the kind of duties he had in the Army, but after an automobile accident, he was not able to keep up this work because of dizzy spells and blacking out spells. Because of this condition, he was not able to do work of any kind, and in about March, 1962, he began receiving AFDC assistance, since he had no other way of supporting his family. At the time he began receiving AFDC assistance, all of his eight children were already born, and since these benefits have begun, Mr. and Mrs. Gary have not had any more children. The Gary family receives the maximum grant of $250 per month from the Welfare Department.

After paying the monthly rent of $75 and the gas and electricity bill, Mr. Gary has less than $150 to feed and clothe his family and to provide them with all the other necessities for the month. All of his children are in school and are constantly in need of clothes and shoes and money for other kinds of supplies. His gas and electricity is sometimes shut off, because he is unable to pay the bill. He is forced to buy clothing and shoes for his children on credit and he is constantly in debt as a result. Most of his children need shoes and clothing now and sometimes they have to stay home from school.

Mr. Gary wants to keep his family together but he has a very difficult time getting along on the amount of money that he receives from the Department of Public Welfare. He does not have enough money to buy food stamps since he must buy $86 worth of food stamps in order to be a part of the food stamp program, and he does not have this much money left after all his other expenses are paid.

He has tried to earn extra money with other jobs, but he is not able to hold a job because of his physical condition. Unless he can receive some kind of financial help, besides the $250 a month, he will have a difficult time keeping his family together.

Jeanette Gary is the wife of Junius Gary and she has joined with him as Plaintiff in this case against the Welfare Department. She is 38 years old and has been married to Junius Gary since October, 1952. Her husband has tried to support the family but because of his physical condition he is unable to work. In 1962, the family applied for AFDC assistance since they had no other means of support. Mrs. Gary is in ill health and she has high blood pressure and arthritis in her arms and legs. She is being treated at Johns Hopkins clinic.

(Signatures omitted.)

STIPULATION EXHIBIT NO. 1

Computation of the Amount of the Grant

Linda Williams and eight children

Requirements — monthly

1. Shelter	$ 45.00
2. Subsistence Need	259.00
3. School Supplies ($.50 for 6th grade and under, $1.00 for 7th grade and over)	4.50
4. Insurance	2.65
Total Requirements	$311.15
Resources	0
Requirements Less Resources	$311.15
Amount of Grant	$250.00

(subject to maximum grant of $250.00)

STIPULATION EXHIBIT NO. 2

Computation of the Amount of the Grant

Mr. & Mrs. Gary and eight children

Requirements — Monthly

1. Shelter	$ 45.00
2. Subsistence	284.00
3. School Supplies ($.50 for 6th grade and under, $1.00 for 7th grade and over)	2.50
Total Requirements	$331.50
Resources	0
Requirements Less Resources	$331.50
Amount of Grant	$250.00

(subject to maximum of $250.00)

United States District Court for the District of Maryland

(T. 1)

PROCEEDINGS IN OPEN COURT — 6-24-68

(T. 2) THOMAS SCHMIDT

DIRECT EXAMINATION

By Mr. DeCosta:

Q. Mr. Schmidt, your address, please? A. 704 Scarlet Drive, Towson, Maryland.

Q. And are you employed with the State Department of Public Welfare? A. Yes, sir.

Q. What is your position with the Department? A. Chief, Division of Fiscal and Statistical Management.

Q. How long have you been in that position? A. Two and one-half years.

* * * * * *

(T. 6) By Mr. DeCosta:

Q. How does the Department arrive at, quote, "need," end of quote, for its grants in AFDC? A. [Mr. Schmidt] Well, there are several bases, based on the item of expenditure or the item of need. For instance, in determining the need for food, the Department uses the Department of Agriculture — what's called low-cost food allowance, and we determine a need for food based on that for a family of certain size — various other elements, rent.

When we determine rent, there is a study made, and then we try to determine what the rental cost is for the people on welfare, what they are actually expending for rent.

So there are various ways in which the needs are determined.

(T. 7) Q. All right, and this foundation is used to arrive at your schedules which you apply to each applicant? A.

This foundation is used to arrive at the schedules but there is the point of the schedule that we arrive at, may not be approved through the budgetary process.

Q. I understand. In other words, it is conceivable that your schedule could be in excess of your budgetary ability? A. That's correct.

Q. And that to the extent that there is an excess, you must, because of your appropriation, disregard your higher standards as set by the Department? A. The higher request.

Q. The higher request, yes. All right. A. Yes, sir.

* * * * * *

(T. 8) A. [Mr. Schmidt] We requested that the 250 maximum and 240 maximum of the counties be eliminated.

Q. [Mr. DeCosta] All right. In other words, this was $1,300,000 in excess of your budgetary needs if the maximum were to be applied? A. That is correct.

Q. And was that included in the Governor's budget or not? A. That was disallowed in the Governor's budget.

Q. So that the Governor's budget went to the General Assembly for fiscal year '69 with the disallowance of $1,300,000; is that correct? A. Yes, sir.

Q. Now, within your fiscal year 1968 budget, if there were no 250 maximum, how much money in your present budget, considering your deficit at which you are now running, is available in terms of percentage figures for you to apply to each grant? A. If you are taking AFDC alone as a single budgetary item—

Q. Alone. A. —there is an elimination of a maximum for a (T. 9) year — would mean in effect that we would run a 4.2 million deficit, or approximately 25 per cent of the total general fund appropriation.

Q. And in order to absorb that deficit, how much in terms of percentage figures would you be able to give to each— A. Assuming—

Q. —element? A. Assuming funds weren't available from other sources, this would mean approximately we would have to reduce grant 25 per cent in AFDC across the board.

Q. Now, are you including in this 25 per cent reduction the number of family units that have been cut off and the amounts of monies cut off by reason of $250.00 maximum? A. Yes.

Q. And how many family units would that be? A. Approximately 2300.

* * * * * *

(T. 11) (Mr. DeCosta) Your Honor, I think his 75 per cent includes the $4 million present deficit; and he has not given us the figure yet, excluding the deficit they are running at; is that correct?

(The Witness) [Mr. Schmidt] The 25 per cent figure included the 3.2 million deficit plus the 957 increase in cost, based on the elimination of the maximum.

(Judge Thomsen) The deficit in what you expect (T. 12) to have next year anyway, in AFDC—

(The Witness) That is our present deficit this year.

By Mr. DeCosta:

Q. That is 1968 fiscal deficit? A. Yes, sir.

(Judge Thomsen) The 1968 deficit. Well now, did they give you enough money to eliminate that?

(The Witness) We hope to be able to get approval from the Governor to transfer funds between the various programs in the agency in which we are not experiencing a deficit, to cover this 3.2 million deficits in AFDC.

(Judge Thomsen) You mean for next year, to pay this year?

(The Witness) For this year.

(Judge Thomsen) Then next year what is going to happen?

(The Witness) We are projecting that we are going to be running a deficit in AFDC next year. Our present projection is somewhat above $3 million.

(Judge Winter) But again, for next year do you project that you will have unexpended funds in other aid programs that could conceivably be transferred to meet this deficit?

(T. 13) (The Witness) Next year we are anticipating an overall deficit in the agency.

By Mr. DeCosta:

Q. Now, what is your present surplus, overall surplus available in the agency? A. Combining all programs, we are estimating that we'll have a surplus of $274,000 at the end of this year.

Q. And what is your present surplus without regard to the end of the year? A. Well,—

Q. Quarter of a million dollars? A. Well, I can't estimate what the surplus is today but I make my projections on a yearly basis, an annual basis. I don't break them down by month.

Q. So what is your testimony with regard to the present overall surplus for the fiscal year '68? A. $274,000 approximately.

(Judge Thomsen) But even so, I don't understand it. The total appropriation is $42 million for AFDC. Why would an increase of $957,000, or $1 million, let's say, (it looks like one out of 42) why would it increase it 25 per cent? Why would it mean a reduction of 25 per cent across the board?

(T. 14) (The Witness) Well, that is the second part of the question. We are now talking about state funds, general funds, and out of that 40 — approximately $42 million, the general fund expenditure, the funds the state puts up, is $16,551,000. So in effect, all of these additional expenditures since the State of Maryland is above the federal matching maximum, all additional expenditures are state expenditures.

(Judge Thomsen) You say the state puts up 16 million?

(The Witness) The state puts up 16 million, yes, sir.

(Mr. DeCosta) Out of the 42. The rest comes from the federal government. Peanuts from the local.

(The Witness) Yes, sir.

* * * * * *

(T. 17) A. [Mr. Schmidt] Twenty-two dollars per recipient. They match on the basis of $32.00 state expenditures of which they pick up 22 and anything — and the state picks up the remainder $10.00. Anything above $32.00 average cost per recipient is borne entirely by the state.

Q. [Mr. DeCosta] And your state average cost per recipient, is presently what, $37.00 approximately— A. It's running close to $40.00 now.

Q. So that the federal government is at its maximum of $22.00 presently? A. That's correct.

* * * * * *

(T. 18) (Judge Thomsen) Well, if five or six children — let's assume it is six just to give us something other than the father and mother (that is eight people in the house), and you would get and give them 250 and you would be getting from the federal government, if there were six children in the unit, six times twenty-two; is that right?

(The Witness) [Mr. Schmidt] That's correct.

(Judge Thomsen) Now, suppose instead of there being six children in the unit, there were nine children in the unit; that would be three more chilren. Would the family still get $250.00?

(The Witness) Yes, sir.

(Judge Thomsen) Would you get six times 22 or nine times 22 from the federal government at this time?

(The Witness) We would receive a maximum total number of persons in the case, in this case nine children, for nine persons.

(Judge Thomsen) So that you were getting that now even though you have the maximum?

(The Witness) Yes, sir.

(Judge Thomsen) You get more from the federal (T. 19) government if there are nine children in the family than you would get when there are only six children in the family?

(The Witness) Yes, sir.

By Mr. DeCosta:

Q. Is it fair to say that the federal maximum is related to the individual whereas your state maximum is related to total assistance to family unit? A. That's correct.

Q. So that the record is clear on this: I gather your response to Judge Thomsen was that if you divide nine into your state maximum of 250, or ten, that would reduce your per-individual appropriation, wouldn't it? A. That's right. It would tend to reduce the average grant per recipient total case—

* * * * * *

(T. 21) (Judge Winter) All right, under the present progrom and under the present law, is there any difference in the amount of state funds paid to the family of six as compared to the family of nine children?

(The Witness) [Mr. Schmidt] Well, based on our matching, if we determine matching on individual cases, there would be. We would in effect be attaining a greater portion of federal matching for the family of nine than we would of six.

(Judge Winter) Well, I'm asking you now if in fact you are attaining a greater portion of matching in a family of nine children than a family of six?

(The Witness) I would have to say yes.

(Judge Winter) So it is fair to state, is it not, that the effect of the maxima is at least two-fold: First of all it

puts a limit on how much money can go out, and conserves state funds in that regard, does it not?

(The Witness) Yes, sir.

(Judge Winter) And it also has the effect, where the maximum amount is paid to a family of more children than the sum of which would add up to the maximum, of shifting a greater proportion of burden of those welfare payments to federal funds.

(The Witness) Yes, sir.

* * * * * *

CROSS EXAMINATION

* * * * * *

(T. 25) By Mr. Matera:

Q. Now, in making up the schedules in which you determine the amount of money that a family unit would be entitled to, who is eligible for welfare, you do determine (T. 26) the number of individuals in the family? A. [Mr. Schmidt] That is correct.

Q. And from that figure you determine how much each individual in that family is entitled to? A. Yes.

Q. So that in a family which is not affected by the maximum, each one of the individuals in that family would receive a computed amount of money in accordance with those schedules; isn't that correct? A. That's correct.

Q. So that the effect of a maximum then, once the family unit exceeds six individuals, is to reduce the amount per person that that family unit receives from the Department of Welfare? A. Once a crossover from the maximum is established, that is the effect of it.

(Judge Thomsen) Actually the amount has been sliding-scaled down for each additional child; isn't that correct; with one child per family you get more per child than for two, three or four. But it hits you double when you get to the maximum.

* * * * * *

(T. 27) By Mr. Matera:

Q. But in effect, Mr. Schmidt, what happens when the family unit exceeds six individuals is that the Department of welfare computes the amount of money the individuals over and above six should receive and yet cannot compensate those individuals because of the maximum grant regulation; isn't that true? A. [Mr. Schmidt] I believe the case worker does compute the total need and that then the 250 would be the maximum.

Q. So that in a family of more than six units, he does compute the total family need and then if that family need, as it will be, is above $250.00, the payment then that that family receives is $250.00. Isn't that so? (T. 28) A. Assuming that there are no resources available, I think that would be the case.

Q. So, in effect, even though the individual in a family of more than six units would be entitled to a greater amount per person than they actually received, they are cut off by the maximum regulation? A. Yes.

Q. Without the schedule, you would not be able to tell me what a family unit of nine should receive, can you? A. No. No, sir.

Q. But, in effect, each individual in that family would receive less than the Department of Welfare computes to be their minimal need because of their maximum grant regulation, isn't that so? A. That is correct.

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United States District Court for the District of Maryland

(T. 1)

PROCCEDINGS IN OPEN COURT — 6-25-68

* * * * * *

(T. 21) (Circuit Judge Winter) Yes, I think it is fair to state to you that at the conclusion of yesterday's proceedings we went into conference and we found ourselves in agreement on how there should be decided the points

which were advanced by the Defendants' amended motion to dismiss.

We had contemplated since the complaint was made that Mr. Matera wanted at least the summer and could not be prepared to proceed to submission of the case on the merits until the fall, the filing of a written opinion dealing with the various points at issue. It seems to us that in light of the discussion today that several results follow.

The first is that we would unduly delay the proceedings or unduly formalize the proceedings by preparing a formal written opinion at this time and

Secondly, that we would be of help to counsel in preparation of briefs and in determining the scope of the issues which we think are before us if we were to announce, at least in summary fashion, our conclusions resulting from yesterday's argument.

As we understand the argument that was advanced yesterday, the claim was made that the complaint should be dismissed because the relief sought was barred or prevented from being granted by this Court by the Eleventh Amendment to the Constitution; secondly, that we could not (T. 22) proceed to final judgment because of the absence of indispensable parties and that the suit ought to be dismissed at this stage for that reason.

Thirdly, we understood that there was an attack on the composition or the jurisdiction — using jurisdiction in the broad sense — of the Court in that there was not a substantial federal question presented to us by the pleadings and

Lastly, that the Court ought to abstain from deciding the alleged Constitutional questions, as well as the alleged question of repugnance between the Maryland regulation and the Federal Statute until such time as a court of the State of Maryland decided whether the Maryland regulation was in conflict with the Maryland statute.

We find some of these grounds to have some merit; others to have no merit. And we reach the conclusion that the motion to dismiss should be denied.

On the Eleventh Amendment point, we are of the view that the Eleventh Amendment would prohibit the granting of relief claimed in Prayer 2(b) of the Complaint. Prayer 2(b) when viewed in the light of the allegations, which are, of course, admitted to be true for this purpose by the amended motion to dismiss, would amount to the grant of (T. 23) a money judgment of forty-some dollars per month, as I recall, in favor of Mrs. Williams and a greater amount (the precise figure I do not recall) on behalf of the Plaintiffs Gary.

This we think the Eleventh Amendment absolutely prohibits since this aspect of the suit would in effect be a suit between a citizen of a state and the state, where the state has not consented to be sued; and we take judicial knowledge of the fact that Maryland has not consented to be sued.

This does not mean, however, that the suit is to be dismissed, because it is perfectly clear by established law laid down over a number of years that a suit against a state officer in his official capacity, alleging that in his official capacity he is administering or executing or promulgating or carrying into effect an invalid law or an invalid state-wide regulation, is not a suit such as is proscribed by the Eleventh Amendment. And to that extent, it would seem to us that the complaint is not barred and we could proceed to hear it and adjudicate it on the merits.

What I said about the Eleventh Amendment is the key to the contention that there is a lack of indispensable parties here. I think we all agree that if we had jurisdiction and the Eleventh Amendment did not prohibit us from (T. 24) granting the type of relief which is sought in Prayer 2(b), that it would be necessary for us to have one or more of the budgetary and appropriation officials of the state of Maryland as defendants before the Court before the Court could proceed to final judgment.

Since we have concluded that we could not give a money judgment or a form of decree which is tantamount to a money judgment in this case, it follows that because the parties before us, which are the officials of the state of

Maryland, and the only officials of the state of Maryland who have the duty to enforce and to apply the regulation, the validity of which is in question, are named as parties defendant, that all indispensable parties are before the Court; and the absence of an indispensable party is not established. So that on this ground, the Court too could proceed to final adjudication.

At this point, and particularly because the matter is about to be submitted to us, we will not dwell on our views on the substantiality of the Constitutional question except to say that at least so far as the equal-protection clause of the Fourteenth Amendment is concerned, we believe that the plaintiffs' contentions are not frivolous. This is not to say that we accept them or that we may not ultimately reject them but certainly this is not (T. 25) such an insubstantial or frivolous claim of denial of Constitutional rights that we feel in any sense that we would be justified at this point in dismissing the litigation out of hand.

On the abstention point, our views are that abstention is proper in speaking in the abstract in cases which have exceptional circumstances. We do not think that this is the type of case in which we ought to abstain. We reach this conclusion for a number of reasons.

The Plaintiffs' contention, as set forth in their complaint, that the Maryland regulation is repugnant to the Maryland statute is only one of three major contentions advanced, in addition to which jurisdiction of the Court is invoked under the Civil Rights Statute; and we have a very recent expression from the Supreme Court of the United States in King v. Smith, that where a suit is brought under the Civil Rights Statute, and where there appears to be a not insubstantial claim of denial of Federal Constitutional right, that it is proper for a Federal Court to go forward with an adjudication on the merits irrespective of whether a state court, by state construction of state law, at some later date might achieve the same result and make it unnecessary for the Federal Court to act.

(T. 26) In short, on the abstention point, we do not think that there are here the peculiar circumstances which

would cause us to abstain; and I think we note also in passing that even if we were to conclude to abstain, this would not mean that the suit would be dismissed. It would mean simply that the proceedings would be stayed until appropriate litigation could be instituted or brought to a conclusion in a state court which would determine the state issue. But the latter is academic because we concluded in this case that we should not abstain.

It is for those reasons that we will deny the motion to dismiss but, in denying the motion to dismiss, of necessity we are limiting the issue as to the nature of the relief which the plaintiffs are entitled to recover or receive.

Now, I might ask Judge Thomsen and then, in turn, Judge Harvey, if they have any additional or supplementary views that they would like to state on these various points.

(District Judge Thomsen) No, I concur.

(District Judge Harvey) I concur completely.

(Circuit Judge Winter) That being so, Mr. Matera, I think you would appreciate that we want your briefs limited to things that we think are live issues before us.

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United States District Court for the District of Maryland

INITIAL OPINION

WINTER, Circuit Judge:

Before us now[1] on the pleadings, stipulations and testimony are plaintiffs' prayers that we declare invalid and

[1] For the reasons stated in an oral opinion from the bench, we heretofore denied a motion to dismiss, based on various grounds. We also indicated that to the extent that the prayers of the complaint might be construed to require the Governor and General Assembly of Maryland to appropriate additional moneys to make larger payments to plaintiffs, such relief was barred by the Eleventh Amendment.

permanently enjoin the enforcement of the "maximum grant" regulation of the Maryland Department of Public Welfare which, summarized, provides that, irrespective of the need and eligibility, a family receiving benefits under the Aid to Families with Dependent Children Program (AFDC), established by the Social Security Act of 1935, as amended, 42 U.S.C.A. §§601-609, may not receive in excess of $250.00 per month. The declaration sought is that the "maximum grant" regulation is inconsistent with the Social Security Act and that it denies equal protection of the laws. Jurisdiction is properly invoked under Civil Rights Act, 28 U.S.C.A. §1343(3) and (4), and 42 U.S.C.A. §1983, and the case is an appropriate one for a three-judge District Court under 42 U.S.C.A. §2281. *King v. Smith*, 392 U.S. 309 (1968).

Maryland participates in AFDC. 8A Ann. Code of Maryland, Art. 88A, §§44A, *et seq.* By regulations approved by the Secretary of Health, Education and Welfare, Maryland has adopted a schedule setting forth standards of need. The schedule lists the monetary need for family units of one to ten persons, with decreasing additional amounts for each person over the original recipient but with a fixed additional amount for each person over ten persons. Maryland has also adopted a "maximum grant" regulation, Maryland Manual of the Department of Public Welfare, Part II, Rule 200, §VII, 1, which provides that, irrespective of the resulting figure after the resources of a family are deducted from its need as prescribed in the schedule, the maximum grant permitted under AFDC in Baltimore City is $250.00 per month.[2] The maximum grant regulation is applicable only to members of a family unit who live together; it does not apply to an eligible recipient who resides in another household or a child-care institution.

Plaintiffs have sued for themselves and on behalf of the class which they represent. Plaintiff Linda Williams resides with her eight children, who range in age from

[2] In the case of recipients who do not reside in Baltimore City the maximum grant is $240.00 per month. All plaintiffs in the instant case are residents of Baltimore City.

four years to sixteen. Their father is continuously absent from her home and she and one of her children are in poor health. They are totally without financial resources. This condition did not arise until sometime after the birth of her youngest child. Under the standards of need, her family should receive benefits in the amount of $296.15 per month while, in fact, she is granted maximum welfare in the amount of $250.00 per month by reason of the application of the maximum grant regulation.

Plaintiffs Junius Gary and his wife live together with their eight children, who range in age from four years to eleven. Mr. Gary is totally disabled from working for medical reasons, and Mrs. Gary, who is required to remain at home to care for her children, is also in ill health. They are totally without financial resources. This condition did not arise until after the birth of their youngest child and until Mr. Gary became disabled for employment. According to the standards formulated by the Department of Public Welfare they should receive $331.50 per month for themselves and their eight children, but they are limited to a monthly grant of $250.00 by reason of the maximum grant regulation.

If Mrs. Williams were to place two of her children of twelve years or over with relatives, each child so placed would be eligible for assistance in the amount of $79.00 per month, and she and her six remaining children would still be eligible to receive the maximum grant of $250.00. If Mr. and Mrs. Gary were to place two of their children between the ages of six and twelve with relatives, each child so placed would be eligible for assistance in the amount of $65.00 per month, and they and their six remaining children would still be eligible to receive the maximum grant of $250.00.

From the testimony in the case, it appears that the maximum grant regulation has its genesis and rationale in the fact that the Governor and the General Assembly of Maryland have failed to appropriate sufficient funds for Maryland's share of the cost of AFDC to satisfy the state-determined need of all persons entitled to benefit thereunder.

The purpose of the maximum grant regulation is solely to to conserve state funds, by allocating state funds (less in amount than state-recognized need) among only some of the persons entitled thereto. Because the amount of federal funds to support AFDC is computed on the basis of the need of recipients, rather than the extent to which the State satifies that need, the maximum grant regulation has the incidental effect of increasing the federal government's share of the cost of the total program beyond what would be the amount of that share had the maximum grant regulation not been adopted.

I.

The history, the scope and the basic purposes of the AFDC program, initiated as part of the Social Security Act of 1935, are fully developed in *King v. Smith, supra*, to which reference is made for a fuller treatment. It suffices to state that while State participation in the scheme of cooperative federalism is voluntary on the part of each State, and while each State "is free to set its own standards of need," as well as "to determine the level of benefits by the amount of funds it devotes to the program" (*King v. Smith, supra*, at 318-319), those which desire to take advantage of the substantial federal funds available for distribution to needy children are required to submit an AFDC plan for the approval of the Secretary of Health, Education and Welfare. 42 U.S.C.A. §§601-604.[3] The plan, to be valid, must conform to the requirements of the Act and applicable regulations of the Secretary.[4]

Section 402 of the Act, 42 U.S.C.A. §602, sets forth the mandatory requirements of a state plan for aid and serv-

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[3] This record does not reflect whether Maryland's "maximum grant" regulation has been given such approval. Presumably, because of its newness, it has not. But approval, while of interest, would beg the question of whether it comports with the Act and the Constitution.

[4] Congress has the unquestioned power to fix the terms upon which its allotments to states shall be disbursed. *King v. Smith, supra; Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275 (1958); *Oklahoma v. United States Civil Serv. Com.*, 330 U.S. 127 (1947).

ices to needy families with children. *Inter alia*, the plan must "provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to *all* eligible individuals" (emphasis supplied). The mandate is clear that, within the framework of state-determined standards of need, the State must meet those needs in regard to "all eligible individuals."

Who are "eligible individuals" is supplied by other provisions of the Act. Section 401 of the Act, 42 U.S.C.A. §601, states that the legislative purpose of appropriations under AFDC is:

> "For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, *to needy dependent children and the parents or relatives with whom they are living* to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection * * *." (emphasis supplied.)[5]

"Dependent child" is defined in §406, of the Act, as amended, 42 U.S.C.A. §606(a).[6] Where there exists a "de-

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[5] As originally enacted, AFDC permitted State disqualification for benefits on the grounds of illegitimacy or state determination that a dependent child did not reside in a "suitable home." As part of legislation outlawing immorality and illegitimacy as disqualifying factors, Congress enacted 42 U.S.C.A. §608 to permit payments to States for benefits to "dependent children" placed in foster homes and child-care institutions. See discussion *King v. Smith*, pp. 322-324.

[6] The full text of § 606(a) follows:

"§ 606. Definition

When used in this subchapter—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the

pendent child," the "aid to families with dependent children," which is the object of the legislation, is defined to include money payments or medical care to the relatives with whom the dependent child is living; and if that relative is a parent, to the spouse of such parent, under certain circumstances. 42 U.S.C.A. §606(b).[7] The amount of such aid, under the circumstances just mentioned, is thus computed by treating the relative, parent or spouse of parent, as the case may be, of the "dependent child" as a part of the family unit.

It will be noted that the definitions contain no limitation on eligibility by reason of the fact that one, who is otherwise a "dependent child," resides in a household with or without one or more other siblings or other persons. Nor do the definitions or any other portion of the Act[8] vest in any state the authority to embroider upon the definition of "dependent child," so as to insert conditions and limitations beyond those imposed by Congress. For practical purposes, Maryland's maximum grant regulation means (assuming that the family lacks other financial resources) that in computing the amount of an award, any dependent child in excess of the fourth dependent child living with both parents, or any dependent child in excess of the fifth

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death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending school, college, or university, its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."

[7] 42 U.S.C.A. § 608 modifies this definition, however, to permit a child to be treated as a "dependent" child when he has been placed in a foster home or a child-care institution under the conditions set forth in that section. See also, ft. 5, *supra*.

[8] We discuss, *infra*, defendants' contention that the Social Security Act Amendments of 1967 constitute implied Congressional recognition of the validity of Maryland's maximum grant regulation.

dependent living with one parent, does not count as a "dependent child." In effect, therefore, Maryland's maximum grant regulation would permit Maryland to avoid the mandate of §402 that it provide payments to "*all*" eligible individuals.[9]

Maryland's maximum grant regulation also violates part of the basic philosophy underlying AFDC. As originally enacted, §406 of the Act, 49 Stat. 629, defined a "dependent child" as one under age sixteen, in need, and living with his parents or a certain class of relatives.[10] The designated class of relatives was expanded in 1956 by 70 Stat. 850, 855.[11] And as we have noted, in 1961 the definition of "dependent child" was amended to permit benefits to be granted to needy children in foster homes or in child-care institutions. The 1961 amendment, 75 Stat. 75, also permitted aid to children whose need arose from unemployment of their parents not attributable to physical or mental incapacity. It is clear, nevertheless, that one of the principal purposes of AFDC was to preserve intact the family unit.[12] The inclusion of relatives, other than par-

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[9] Of course, in the case of a "dependent child" moneys disbursed for him are paid not to him but to a responsible adult, child-care institution, child-placement or child-care agency for his benefit. See, *e.g.*, 42 U.S.C.A. § 608. Other provisions of the Act make clear, however, that a benefit so paid is treated strictly as a benefit for the child and not to the recipient. For example, 42 U.S.C.A. § 602(b) enjoins the Secretary not to approve a State plan which denies aid with respect to any child who has not met certain age or residency requirements; and 42 U.S.C.A. § 605 permits a State to provide counseling and guidance services "[W]henever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child." That the "dependent child" is an "eligible" recipient is manifest.

[10] i.e., grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt.

[11] This amendment added first cousins, nephews and nieces to the qualifying group.

[12] Senate Report No. 628, 74th Congress (1935) states: "Through cash grants adjusted to the *needs* of the family *it is possible to keep young children with their mother in their own home*, thus preventing the necessity of placing children in institutions. This is recognized

ents, and the subsequent expansion of the class of qualifying relatives were to take care of the situations where both parents were dead or continually absent from the home and a relative was acting *in loco parentis*. Provision for aid to children whose parents were unemployed for reasons other than physical or mental incapacity was to respond to need, while provision for aid to children in foster homes or child-care institutions was, again, to meet need under a scheme which recognized that "there are some home environments that are clearly contrary to the best interest of these children." It is interesting to note that Senate Report No. 165, 87th Cong. (1st Sess.), 1961 U. S. Code Cong. and Adm. News, pp. 1716, 1721, in which the quoted statement was made, reaffirmed that "[t]he objective of the aid to dependent children program is to provide cash assistance for needy children in their own homes."[13]

The Maryland maximum grant regulation is in conflict with this legislative purpose, both as expressed in the Act and in its legislative history. As has been shown, the maximum grant regulation provides a powerful economic incentive to break up large families by placing "dependent children" in excess of those whose subsistence needs, when added to the subsistence needs of other members of the family, exceed the maximum grant, in the homes of per-

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by everyone to be the least expensive and altogether most desirable method for meeting the needs of these families that has yet been devised." (Emphasis supplied.)

House Report No. 615, 74th Congress (1935) also states: "* * * it has long been recognized in this country that the best provision that can be made for families of this description (without a potential breadwinner) is public aid with respect to dependent children *in their own homes.*" (Emphasis supplied.)

[13] It is also worthy of note that 8A Ann. Code of Md., Art. 88A, § 44A states: "It is hereby declared that the primary purpose of aid given under this subtitle *is the strengthening of family life* through services and financial aid, *whereby families may be assisted to maximum self-support in homes meeting the requirements for child care* established by law in this State." Plaintiffs suggest a conflict between the regulation and this statute. Since plaintiffs do not press the point, we do not consider it.

sons included in the class of eligible relatives. If this is done, the pernicious effect of the maximum grant regulation is avoided, but the purpose of keeping them in their own home is defeated.

Defendants contend that the portion of the Social Security Act Amendments of 1967 which amended §403 of the Act, 42 U.S.C.A. §603, by adding a new subsection (d) thereto, is clear Congressional recognition that a State may impose a maximum grant limitation on benefits which it disburses. In general, §403 provides for payments to the State of the federal portion of the cost of AFDC and specifies how that portion is to be computed. The text of the new subsection (d) is set forth in the margin.[14]

We do not think that §403(d) of the Act has the effect which defendants claim. Section 403(d) relates only to a determination of the amount of federal matching funds. It limits federal funds to the number of certain defined individuals who fall within the definition of "dependent children" but it does not purport to affect a State's obligation to *all* of the individuals who fall within that definition if a State participates in AFDC as required by §602. The limitation on federal funds is applicable *only* (a) to dependent children under age 18 (while the definition of "dependent children" contained in §406(a) of the Act includes some children between 18 and 21), and (b) to dependent children deprived of parental support by reason of the continued absence of a parent (while the definition of "dependent child" contained in the Act also includes

[14] "(d) Notwithstanding any other provision of this Act, the average monthly number of dependent children under the age of 18 who have been deprived of parental support or care by reason of the continued absence from the home of a parent with respect to whom payments under this section may be made to a State for any calendar quarter after June 30, 1968, shall not exceed the number which bears the same ratio to the total population of such State under the age of 18 on the first day of the year in which such quarter falls as the average monthly number of such dependent children under the age of 18 with respect to whom payments under this section were made to such State for the calendar quarter beginning January 1, 1968, bore to the total population of such State under the age of 18 on that date."

need arising from the death or physical or mental incapacity or unemployment of a parent. By contrast, Maryland's maximum grant regulation cuts a broad swath on a non-selective basis.

Much of the legislative history of new subsection (d) is irrelevant, but there is enough history to provide an explanation for its selective operation. House Report No. 544, 90th Con., 1st Sess., p. 110, where subsection (d) had its genesis, states that its purpose would limit federal expenditures in the absent parent subcategory of "dependent children," which is the fastest growing subcategory of need, and "should also give the States an incentive to make effective use of the constructive programs[15] which the bill would establish." The addition of subsection (d) was eliminated by the Senate but reinserted, in modified form, by the Conference Committee. In the Second Session of the 90th Congress, another effort was made in the Senate to eliminate subsection (d), but the attempt was abortive.

The statement of Representative Mills, who was Chairman of the House Ways and Means Committee, where the AFDC freeze provision originated and who was also floor manager of the bill, is significant in explaining the purpose of the bill and *in negating the effect claim for it by defendants*. He said:

> "Finally, Mr. Chairman, the bill would add a provision to present law which would limit Federal financing for the largest AFDC category — where the parent is absent from the home — to the proportion of each State's total child population that is now receiving AFDC in this category. This provision, we believe, would give the States an additional incentive to make effective use of the constructive programs which the bill would establish. Moreover, this *limitation on*

[15] The 1967 Amendments, P. L. 90-248; 81 Stat. 821, *inter alia*, established a work incentive program for recipients, provided for the employment of qualified recipients in administering the program and provided means for locating parents who desert or abandon dependent children, including the furnishing of last-known addresses by the Internal Revenue Service.

Federal matching will not prevent any deserving family from receiving aid payments. The States would not be free to keep any family off the rolls to keep within this limitation because there is a requirement in the law that requires equal treatment of recipients and uniform administration of a program within a state. . . ." 113 Cong. Rec. H. 10670 (August 17, 1967; unbound) (emphasis supplied).[16]

Because of its selective nature, because it applies only to a determination of the amount of a federal grant and because its legislative history shows that it had a special purpose other than that ascribed to it by defendants, we conclude that subsection (d) is of no aid or comfort to defendants. Thus, the basic purpose of the Act that, when a State participates in AFDC, all dependent children receive benefits thereunder according to need is unsullied, and the Maryland maximum grant regulation is manifestly in conflict. Therefore, Maryland's maximum grant regulation cannot stand.

II.

Our view that the Maryland regulation is invalid is reinforced by our conclusion that the regulation cannot stand under the equal protection clause. It is, therefore, appropriate that we discuss the constitutional issue.

We have searched the record in vain for any state purpose to be served by the maximum grant regulation other than to fit the total needs of the State's dependent children, as measured by the State's standards of their subsistence requirements, into an inadequate State appropriation. The search was important, and the absence of another reason fatal to the defense, because, clearly, dependent children of large families receive different treatment from dependent children of small families. Discrimination of

[16] In regard to the last part of Chairman Mills' statement, it should be noted that § 402 of the Act, 42 U.S.C.A. § 602, requires that AFDC be effective in all political subdivisions of a participating State, as well as aid be furnished with reasonable promptness to all eligible individuals.

this type, not to run afoul of the equal protection clause, must be founded on reason in the light of its purpose. *McLaughlin v. Florida*, 379 U.S. 184, 189 (1964). While a State may classify persons for various purposes, it may not do so on arbitrary or irrational grounds. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Carrington v. Rash*, 380 U.S. 89 (1965). As most recently stated by the Supreme Court, in a case holding a wrongful death statute which denied recovery to illegitimate children while permitting recovery to lawful issue invalid under the equal protection clause:

> "While a State has broad power when it comes to making classifications * * it may not draw a line which constitutes an invidious discrimination against a particular class. * * * Though the test has been variously stated, the end result is whether the line drawn is a rational one. * * *" *Levy v. Louisiana*, 391 U.S. 68, 71 (1968).

See also, *Glona v. American Guar. & L. Ins. Co.*, 391 U.S. 73 (1968).

That under these rules the maximum grant regulation is offensive is easily demonstrable. AFDC is a program to provide support for dependent children. By the standards of need set by Maryland, a dependent child is in as great need and as deserving of aid, whether he be the fourth or the eighth child of a family unit, although if the latter, the amount of his need may not be quite as great as that of the former, because it is cheaper to provide clothing, food and shelter for the eighth child than for the fourth. Yet, the maximum grant regulation, in accomplishing its purpose of conservation of inadequate funds, assumes that a child, because he is the eighth (or any other number where to grant him benefits would bring the aggregate benefits to the family unit over the maximum grant) is either not in need or that his need must go unsatisfied. Reason and logic will not support such a result. The fact that such a child, if moved to the home of an eligible relative, may receive such benefits lends additional support to this conclusion. In effect, Maryland impermissibly conditions his eligibility for benefits upon the relinquishment

of the parent-child relationship. *Cf. Sherbert v. Verner*, 374 U.S. 398 (1963). The result we reach is fully in accord with that of other courts which have considered the same or similar questions. *Collins v. State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4 (1957); *Anderson v. Schaefer*, ... F. S. ..... (N.D. Ga. 1968); *Metcalf v. Swank*, ... F. S. ..... , 37 L.W. 2277 (N.D. Ill. 1968) (dictum). We hold, therefore, that the maximum grant regulation transgresses the equal protection clause.

III.

Lest our holdings be misunderstood, some additional words are required. We do not hold that Maryland must appropriate additional funds to support its participation in the program of AFDC; we reiterate our previous holding that the Eleventh Amendment deprives courts of the United States from jurisdiction to grand such relief.

We hold only that if Maryland has appropriated insufficient funds to meet the total need under AFDC, as measured by the standards for determining need that Maryland has prescribed, Maryland may not, consistent with the Social Security Act or the equal protection clause, correct the imbalance by application of the maximum grant regulation. No other proposed solution to this problem is before us, and we express no other opinion.

Within ten days counsel may agree upon and present a form of order consistent with these views.

/s/ HARRISON L. WINTER,
United States Circuit Judge.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court.

/s/ ALEXANDER HARVEY, II,
United States District Judge.

United States District Court for the District of Maryland

MOTION TO AMEND FINDINGS OF FACT AND JUDGMENT OR IN THE ALTERNATIVE TO TAKE ADDITIONAL TESTIMONY, OR FOR A NEW TRIAL, OR IN THE ALTERNATIVE TO ALTER OR AMEND THE JUDGMENT

Defendants move, pursuant to rules 52 (b) and 59 of the Federal Rules of Civil Procedure, that this court amend its findings and judgment, or grant a new trial of this cause or receive additional evidence and alter or amend the judgment. The grounds of this Motion are set out in the accompanying Memorandum, Affidavits, and Exhibits.

(Signatures and Certificate of Service.)

United States District Court for the District of Maryland

EXCERPTS FROM

Exhibit A to Defendant's "Memorandum In Support Of Motion To Amend Findings Of Fact And Judgment Or In The Alternative To Take Additional Testimony, Or For A New Trial Or In The Alternative To Alter Or Amend The Judgment" (excerpts from Rules of Maryland State Department of Public Welfare regarding maximum grant limitations).

Effective May 1, 1964

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

A. A grant from a single category may not exceed:

a. $230 for local departments under any "Plan A" of Shelter Schedule B

b. $220 for local departments under any "Plan B" of Shelter Schedule B

c. $210 for local departments under any "Plan C" of Shelter Schedule B

Note: If the resource of support is paid as a refund (V-2, F) the grant may exceed the maximum by an amount of such refund. This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #294
3-64
II — Rule 200 — Page 20

* * * * * *

Effective February 1, 1964

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

A. A grant from a single category may not exceed:

a. $230 for local departments under any "Plan A" of Shelter Schedule B

b. $220 for local departments under any "Plan B" of Shelter Schedule B

c. $210 for local departments under any "Plan C" of Shelter Schedule B

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #288
8-63
II — Rule 200 — Page 20

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Effective September 1, 1963

Public Assistance Rule 200

VII — Amount of Grant and Payment.

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

A. A grant from a single category may not exceed:

a. $230 for local departments under any "Plan A" of Shelter Schedule B

b. $220 for local departments under any "Plan B" of Shelter Schedule B

c. $210 for local departments under any "Plan C" of Shelter Schedule B

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #288
8-63
II — Rule 200 — Page 20

• • • • • •

Effective September 1, 1962

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

   A. No grant may exceed:

      a. $230 for local departments under any "Plan A" of Shelter Schedule B

      b. $220 for local departments under any "Plan B" of Shelter Schedule B

      c. $210 for local departments under any "Plan C" of Shelter Schedule B

   B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #275
7-62
II — Rule 200 — Page 20

* * * * * *

Effective July 1, 1961

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

   A. No grant may exceed:

      a. $210 for local departments under any "Plan A" of Shelter Schedule B

      b. $200 for local departments under any "Plan B" of Shelter Schedule B

c. $190 for local departments under any "Plan C" of Shelter Schedule B

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #261
5-61
II — Rule 200 — Page 20

• • • • • •

Effective June 1, 1960

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

A. No grant may exceed:

a. $210 for local departments under any "Plan A" of Shelter Schedule B

b. $200 for local departments under any "Plan B" of Shelter Schedule B

c. $190 for local departments under any "Plan C" of Shelter Schedule B

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #249
5-60
II — Rule 200 — Page 20

• • • • • •

Effective October 1, 1958

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when re-

sources are deducted from requirements as set forth in this Rule, *except* that:

A. No grant may exceed:

a. $210 for local departments under any "Plan A" of Shelter Schedule B

b. $200 for local departments under any "Plan B" of Shelter Schedule B

c. $190 for local departments under any "Plan C" of Shelter Schedule B

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #232
10-58
II — Rule 200 — Page 20

* * * * * *

Effective April 1, 1957

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

A. No grant may exceed $180.

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #221
9-57
II — Rule 200 — Page 20

* * * * * *

Effective February 1, 1957

Public Assistance — Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

   A. No grant may exceed $180.

   B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #212
12-56
II — Rule 200 — Page 20

* * * * * *

Effective January 1, 1954

Public Assistance — Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

   A. No grant may exceed $175.

   B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #180
12-53
II — Rule 200 — Page 20

* * * * * *

Effective October 1, 1952

Public Assistance — Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

   A. No grant may exceed $175.

   B. A grant is subject to any limitation established by any existing rule on insufficient funds.

* * * * * *

Effective January 1, 1951

Public Assistance — Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements. The actual amount of grant paid, however, is subject to two limitations:

   A. Any existing current rule on insufficient funds.

   B. Maximum amount on monthly grants as set forth in Schedule T of this Rule.

SCHEDULE T

MAXIMUM AMOUNT OF MONTHLY GRANT

I *Type of Assistance*	II *Maximum Amount of Monthly Grant* (except as specified in Column III)	III *Exceptions*
OAA PANB APTD GPA (one person)	$55	When need of payee includes: Nursing care Special diet prescribed by physician Guide service to the blind Maintenance of "seeing eye" dog Maximum is: A—$90 B—$80 C—$70 As specified for local departments in Schedule D of this Rule
ADC GPA 2(or more persons) or Any combination of assistance grants to an entire assistance unit.	*Group A*—— $165 Allegany, Anne Arundel, Balto. City, Balto. Co., Cecil, Montgomery, Pr. George's	
	Group B—— $155 Charles, Frederick, Harford, Howard, Washington	When need of any member of assistance unit includes special diet prescribed by physician:
	Group C—— $145 Calvert, Caroline, Carroll, Dorchester, Garrett, Kent, Qn. Anne's, St. Mary's, Somerset, Talbot, Wicomico, Worcester	No maximum

* * * * * *

(Effective February, 1950)

Public Assistance — Rule 200

XIV — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed the maximum amounts specified for each local department as follows:

Group A:

Allegany, Anne Arundel, Baltimore City, Baltimore Co., Cecil, Montgomery, Prince George's

Group B:

Charles, Frederick, Harford, Howard, Washington

Number Of Persons	*Maximum Monthly Grant*	*Number Of Persons*	*Maximum Monthly Grant*
2	$ 72.00	2	$ 67.00
3	85.00	3	80.00
4	100.00	4	95.00
5	114.00	5	109.00
6	123.00	6	118.00
7	132.00	7	127.00
8	141.00	8	136.00
9	150.00	9	145.00
10 or more	159.00	10 or more	154.00

Group C:

Calvert, Carroll, Dorchester, Garrett, Wicomico, Worcester

Group D:

Caroline, Kent, Queen Anne's, St. Mary's, Somerset, Talbot

Number Of Persons	*Maximum Monthly Grant*	*Number Of Persons*	*Maximum Monthly Grant*
2	$ 63.00	2	$ 61.00
3	76.00	3	74.00
4	91.00	4	89.00
5	105.00	5	102.00
6	114.00	6	111.00
7	123.00	7	120.00
8	132.00	8	129.00
9	141.00	9	138.00
10 or more	150.00	10 or more	147.00

(Effective June 1, 1949)

Public Assistance — Rule 200

XIII — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed the maximum amounts specified for each local department as follows:

Group A							
Allegany	$121.00	per month	for	5	persons	or less	
Anne Arundel	132.00	"	"	6	"		
Baltimore City	143.00	"	"	7	"		
Baltimore County	154.00	"	"	8	"		
Cecil	165.00	"	"	9	"		
Montgomery	176.00	"	"	10	"	or more	
Prince George's							
Group B							
Charles	$117.00	per month	for	5	persons	or less	
Frederick	128.00	"	"	6	"		
Harford	139.00	"	"	7	"		
Howard	150.00	"	"	8	"		
Washington	161.00	"	"	9	"		
	172.00	"	"	10	"	or more	

5-49
II — Rule 200 — Page 16

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(Effective December 1, 1948)

Public Assistance — Rule 200

XIII — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed the maximum amounts specified for each local department as follows:

Group A							
Allegany	$121.00	per month	for	5	persons	or less	
Anne Arundel	132.00	"	"	6	"		
Baltimore City	143.00	"	"	7	"		
Baltimore County	154.00	"	"	8	"		
Cecil	165.00	"	"	9	"		
Montgomery	176.00	"	"	10	"	or more	
Prince George's							
Group B							
Charles	$117.00	per month	for	5	persons	or less	
Frederick	128.00	"	"	6	"		
Harford	139.00	"	"	7	"		
Howard	150.00	"	"	8	"		
Washington	161.00	"	"	9	"		
	172.00	"	"	10	"	or more	

Group C

Calvert	$112.00	per	month	for	5	persons	or less
Carroll	123.00	"	"	"	6	"	
Dorchester	134.00	"	"	"	7	"	
Garrett	145.00	"	"	"	8	"	
Wicomico	156.00	"	"	"	9	"	
Worcester	167.00	"	"	"	10	"	or more

Group D

Caroline	$110.00	per	month	for	5	persons	or less
Kent	121.00	"	"	"	6	"	
Queen Anne's	132.00	"	"	"	7	"	
St. Mary's	143.00	"	"	"	8	"	
Somerset	154.00	"	"	"	9	"	
Talbot	165.00	"	"	"	10	"	or more

The ADC maximum will apply for GPA if it is a family group including children.

12-48
11 — Rule 200 — Pages 15 & 15A

* * * * * *

(Effective October 1, 1948)

Public Assistance — Rule 200

XIII — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed the maximum amounts specified for each local department as follows:

Group A

Allegany	$121.00	per	month	for	5	persons	or less
Anne Arundel	132.00	"	"	"	6	"	
Baltimore City	143.00	"	"	"	7	"	
Baltimore County	154.00	"	"	"	8	"	
Cecil	165.00	"	"	"	9	"	
Montgomery	176.00	"	"	"	10	"	or more
Prince George's							

Group B

Charles	$117.00	per	month	for	5	persons	or less
Frederick	128.00	"	"	"	6	"	
Harford	139.00	"	"	"	7	"	
Howard	150.00	"	"	"	8	"	
Washington	161.00	"	"	"	9	"	
	172.00	"	"	"	10	"	or more

Group C

Calvert	$112.00	per	month	for	5	persons	or less
Carroll	123.00	"	"	"	6	"	
Dorchester	134.00	"	"	"	7	"	
Garrett	145.00	"	"	"	8	"	
Wicomico	156.00	"	"	"	9	"	
Worcester	167.00	"	"	"	10	"	or more

Group D							
Caroline	$110.00	per	month	for	5	persons	or less
Kent	121.00	"	"	"	6	"	
Queen Anne's	132.00	"	"	"	7	"	
St. Mary's	143.00	"	"	"	8	"	
Somerset	154.00	"	"	"	9	"	
Talbot	165.00	"	"	"	10	"	or more

The ADC maximum will apply for GPA if it is a family group including children.

8-48
11 — Rule 200 — Pages 15 & 15A

* * * * * *

(Effective July 1, 1948)

Public Assistance — Rule 200

XIII — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed the maximum amounts specified for each local department as follows:

Group A							
Allegany	$100.00	per	month	for	4	persons	
Anne Arundel	110.00	"	"	"	5	"	
Baltimore City	120.00	"	"	"	6	"	
Baltimore County	130.00	"	"	"	7	"	
Cecil	140.00	"	"	"	8	"	
Montgomery	150.00	"	"	"	9	"	
Prince George's	160.00	"	"	"	10	"	
	170.00	"	"	"	11	"	or more
Group B							
Charles	$ 96.00	per	month	for	4	persons	
Frederick	106.00	"	"	"	5	"	
Harford	116.00	"	"	"	6	"	
Howard	126.00	"	"	"	7	"	
Washington	136.00	"	"	"	8	"	
	146.00	"	"	"	9	"	
	156.00	"	"	"	10	"	
	166.00	"	"	"	11	"	or more
Group C							
Calvert	$ 91.00	per	month	for	4	persons	
Carroll	101.00	"	"	"	5	"	
Dorchester	111.00	"	"	"	6	"	
Garrett	121.00	"	"	"	7	"	
Wicomico	131.00	"	"	"	8	"	
Worcester	141.00	"	"	"	9	"	
	151.00	"	"	"	10	"	
	161.00	"	"	"	11	"	or more

Group D

Caroline	$ 89.00	per	month	for	4	persons
Kent	99.00	"	"	"	5	"
Queen Anne's	109.00	"	"	"	6	"
St. Mary's	119.00	"	"	"	7	"
Somerset	129.00	"	"	"	8	"
Talbot	139.00	"	"	"	9	"
	149.00	"	"	"	10	"
	159.00	"	"	"	11	" or more

The ADC maximum will apply for GPA if it is a family group including children.

6-48
II — Rule 200 — Pages 15 & 15A

* * * * * *

(Effective July 1, 1947)

Public Assistance — Rule 200

XIII — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed:

$100.00	per	month	for	4	persons
110.00	"	"	"	5	"
120.00	"	"	"	6	"
130.00	"	"	"	7	"
140.00	"	"	"	8	"
150.00	"	"	"	9	"
160.00	"	"	"	10	"
170.00	"	"	"	11	" or more

The ADC maximum will apply for GPA if it is a family group including children.

2. GPA may be granted to meet the emergency needs of any able-bodied person and his family for a period not to exceed 10 days — provided the County Commissioners or the Mayor and City Council of Baltimore City shall have given written consent to the local department for the expenditure of local funds for this purpose.

3. The State Department will obtain from the local departments monthly reports showing the total amount of money by source of funds, Federal, State and Local, necessary to give assistance to all eligible cases pending.

II — Rule 200 — Page 15

* * * * * *

EXHIBIT B TO DEFENDANTS' "MEMORANDUM IN SUPPORT OF MOTION TO AMEND FINDINGS OF FACT AND JUDGMENT OR IN THE ALTERNATIVE TO TAKE ADDITIONAL TESTIMONY, OR FOR A NEW TRIAL OR IN THE ALTERNATIVE TO ALTER OR AMEND THE JUDGMENT."

State of Maryland, City of Baltimore, ss.

I, Raleigh C. Hobson, Director of the Maryland State Department of Social Services, state that the following is to the best of my knowledge, an accurate account of the development of the maximum grant requirement:

In late 1943, the State Department of Public Welfare adopted its rule and regulation No. 20, relating to the determination of welfare grants. Regulation 20 took effect on January 1, 1944. Prior to its adoption determination of amounts of grants was a function of county welfare boards and the amount of grant for similarly situated persons varied greatly from county to county. Regulation 20 constituted the first state-wide regulation of welfare grants.

At the time Regulation 20 was issued on November 29, 1943, the issuing bulletin, copy of which is annexed as an exhibit to this Affidavit (Exhibit J) stated, "The State Board will be considering the question of whether the regulation should permit the setting of a maximum amount above which no grant will go."

It is my recollection that in the years immediately following the promulgation or Regulation 20, the State Board encountered great opposition from county welfare boards in imposing a state-wide need formula. This opposition was founded on the fact that at the time the welfare costs produced by application of the formula were thrown on the county tax rate, a situation which continued to obtain until the adoption of the so-called "James Amendment" limiting county tax assessment obligations for welfare purposes. A second major ground of opposition was a feeling on the part of many county boards that the need scale was unrealistically high in relation to wage rates and em-

ployment opportunities in varying localities throughout the State.

It is my recollection that very shortly after promulgation of Regulation 20 on January 1, 1944, a maximum grant regulation was imposed.

Maximum grant regulations have been in continuous effect since the inception of state-wide welfare standards in Maryland. The State Board has periodically revised the regulation upward as needs increased because of increases in the cost of living and as additional State and Federal funds become available. Proposals to abandon the regulation have met with opposition both on grounds of cost and on grounds, more frequently voiced by members of county boards, that the maximum welfare payment should not significantly exceed the wage paid to ordinary unskilled labor. In presenting requests for additional budget allocations for welfare purposes to the Legislature and in addressing interested civic groups, I have found that the fact that there is a maximum grant limitation induces greater receptivity to requests for additional budget allocations for welfare purposes and corrects serious misapprehensions held by many in reference to the level of benefits conferred by the welfare system.

During the last two years, as a matter of policy, the Board has proposed the abandonment of maximum grant restrictions. The Legislature has declined to make funds available for this purpose. Budgetary allocations in Maryland for State public assistance programs have increased greatly in Maryland in recent years and it is my understanding that during the period 1957 to 1967, Maryland had the highest relative increase in the Nation in expenditures for public assistance money payments. See Exhibit K to this Affidavit.

The maximum grant regulation has been revised upward on at least seven occasions since its inception and regulations embodying it have been submitted for approval to the Department of Health, Education and Welfare on approximately twenty occasions since 1947 and

to the best of my knowledge, every Maryland maximum grant regulation submitted to the Department of Health, Education and Welfare, including the regulation currently in effect, has received the approval of the Department. Maximum grant regulations, and federal approval of them have thus been part of Maryland welfare practice since the inception of state-wide needs standards in Maryland in 1944.

Sworn to and subscribed to by me this 23rd day of December, 1968.

RALEIGH C. HOBSON,

Director, Maryland State Department of Social Services.

(Jurat.)

EXHIBIT J TO EXHIBIT B

State Department of Public Welfare
120 W. Redwood Street
Baltimore - 1, Maryland

November 29, 1943

To: Executive Secretaries, Local Welfare Boards
Director, Department of Public Welfare of Baltimore

CC: Chairmen, Local Welfare Boards
Chairman, Department of Public Welfare of Baltimore

Re: Rule and Regulation #20

The preparation for putting Rule and Regulation #20 into effect, which is underway throughout the State, brings to light certain phases of the regulation which need modification, clarification or further comment.

Section 2 — Method of Determining Amount

First: Make a change on all copies of the regulation. In the second paragraph cross out the last part of the sentence: "provided there are other persons in the household eligible for general

public assistance." The effect of this deletion is that a recipient may receive a category and general public assistance at one and the same time, provided that need therefor has been established. It is known that there are few instances where this type of grant is needed, examples being bedridden aged persons, or ADC children whose living arrangement approaches a boarding care plan for which the agency assumes responsibility.

Second: The question has been asked, does this section mean that the agency's calculation of amount *must* be given, even though the applicant or recipient states that he does not need that much?

Attached to this circular letter is a discussion of the application of this section, in order to clarify its intention.

Section 6 — Standards of Quantity and Cost

This section states: "Standards of quantity and cost are determined by the local department for all items excepting food." The appendix then states (page 1) "Local Departments will find, in this appendix, reference material explaining the method by which the State Department arrived at a standard for food, as well as suggested methods by which local departments may establish standards for items which are left to the discretion of the local department."

Some of the material in the appendix has put requirements into method which some local departments feel are not workable. Therefore, please regard *all* appendix material with respect to method of establishing local standards for shelter, clothing and household maintenance as suggestive only. When submitting Form #344 on local policy, the test which the State Department will apply will be:

1. Is it understandable and explainable?

2. Does it clearly indicate, for use of the worker, when the amount is to be given, when it is not to be given?

Section 10 — Insufficient Funds — Selection of Most Urgent Need

Item 3 in this section states: "It is the intention and expectation that when funds are insufficient, local and state welfare departments will use *every means available to them* for securing the funds required in order to provide the legal base of a 'minimum subsistence compatible with decency and health' ".

What are the "means" available to the local welfare department which it is expected to take in order to secure the necessary funds?

1. At the time of levy it is intended that the local welfare department make request for sufficient funds. However, this amount must be accurately and reasonably arrived at. The State Manual requires that these local levy requests be submitted to the State Department for review before going to the Commissioners. Each local department approaching a levy date has received from this Department a letter giving instructions with respect to the preparation of the estimate and the supporting data necessary.

2. Local departments whose levy date is later than January 1st will need to consider whether there are, or are not, "means available" for securing more funds. The State Department recognizes the fact that appropriations are made once a year by local governments and that increases in this amount between levy dates are not made. Generally speaking, therefore, it would not be expected that local welfare departments submit formal estimates to Commissioners between levy dates. At the same time, the Commissioners should be cognizant of the effect of the rising cost of living upon assistance grants and it would

be assumed under most circumstances that the county welfare board would wish to discuss this with the Commissioners. Some adjustments with respect to funds have been possible. However, no local department should make formal request to the Commissioners for funds without prior submission to the State Department of estimates, just as would be true in the event of an approaching levy date.

3. The Rule and Regulation is to go into effect on January 1st, irrespective of the amount of money available. The circular letter of September 8, 1943 indicates that the regulation is in effect when the local standards have been set, and filed with the State Department of Public Welfare, and when the local standards are being applied to reconsiderations and new applicants. If funds are insufficient to take care of all need adequately, then the local department may make use of Section 10, *Insufficient Funds*, and also adjust its local standards accordingly.

The State Board will be considering the question of whether the regulation should permit the setting of a maximum amount above which no grant will go.

Sincerely yours,

J. MILTON PATTERSON,

Director.

EXHIBIT K TO EXHIBIT B

Trends in Public Assistance Payments under Federally Aided Programs for Fiscal Years 1957-1967.

U. S. Department of Health, Education, and Welfare

Social and Rehabilitation Service

National Center for Social Statistics

October 1968

TABLE 3

States ranked by percent change in expenditures for money payments under federally aided public assistance programs between fiscal years 1957 and 1967.

STATES RANKED IN ORDER OF SIZE OF PERCENT CHANGE

Maryland	218	New Mexico	72	Utah	26
Delaware	182	Mississippi	70	Vermont	26
New Jersey	181	Tennessee	66	North Dakota	24
New York	171	Alabama	65	Kansas	23
California	164	New Hampshire	63	South Dakota	17
District of Columbia	123	Rhode Island	62	Indiana	12
Virgin Islands	117	Florida	49	Idaho	11
Hawaii	111	Massachusetts	49	Missouri	10
Pennsylvania	105	Michigan	49	Puerto Rico	10
Illinois	98	Texas	47	Wyoming	9
Arkansas	93	Minnesota	43	Colorado	1
Kentucky	85	Georgia	39	Wisconsin	-0.3
Nevada	79	Oklahoma	35	Nebraska	-2
Connecticut	77	West Virginia	32	Washington	-5
North Carolina	76	Oregon	32	Iowa	-7
Virginia	76	Alaska	30	South Carolina	-12
Ohio	74	Maine	29	Montana	-21
Arizona	73	Louisiana	28		

TABLE 4

PUBLIC ASSISTANCE

Expenditures for medical vendor payments for specified programs and selected fiscal years
(In millions)

Program	Fiscal Year 1957	1960	1961	1962	1965	1966	1967
Total	$215	$393	$477	$713	$1,249	$1,606	$2,308
OAA	156	280	304	350	436	416	186
AB	4	8	8	9	12	10	3
APTD	28	46	55	68	128	133	43
AFDC	27	59	69	91	151	139	38
MAA[1]	----	----	43	196	524	538	95
MA[2]	----	----	----	----	----	372	1,944

[1] Program initiated in fiscal year 1961 under Title I of the Social Security Act as provided by the 1960 Amendments to that Act. Some State MAA programs included small amounts of money payments to recipients in which there was no federal financial participation.
[2] Program initiated in fiscal year 1966 under Title XIX of the Social Security Act as provided by the 1965 Amendments to that Act.

EXHIBIT C

U. S. Department of Health, Education, and Welfare
Welfare Administration
Bureau of Family Services

State Maximums and Other Methods of Limiting Money Payments to Recipients of Special Types of Public Assistance, October 1962

Annual Release

Division of Program Statistics and Analysis

Washington, D. C. March 1963

State Maximums and Other Methods of Limiting Money Payments to Recipients of Special Types of Public Assistance, October 1962[1]

This release provides information on State maximums and other methods of limiting money payments to recipients of old-age assistance, aid to the blind, aid to families with dependent children, and aid to the permanently and totally disabled that were in effect in October 1962.[2]

Under the Public Welfare Amendments of 1962, effective October 1, 1962, the Federal share of assistance payments for aid to the blind and aid to the permanently and totally disabled is 29/35 of the first $35 of the average monthly payment per recipient, multiplied by the number of recipients, and from 50 to 65 percent (depending on the State's fiscal capacity as measured by per capita income) of that part of the State's average assistance payment that exceeds $35 (excluding any part of the average payment in excess of $70), multiplied by the number of recipients. The maximum subject to Federal participation under both parts of the formula is $70 times the number of recipients. For old-age assistance, the basis for Federal participation is the same as for aid to the blind and aid to the permanently and totally disabled except that for this program there is additional Federal participation based on vendor payments for medical care.[3] The matching formula for the program

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[1] Reports of this nature are normally submitted by State public assistance agencies for the month of September. The Public Welfare Amendments of 1962, however, made additional Federal funds available, effective October 1, 1962, for each of the four programs covered by the reports. In order that the initial effect of these changes might be reflected, the 1962 State reports were requested for the month of October instead of September.

[2] For information on States making vendor payments for medical care in October 1962 and expenditures for such payments, see the *Social Security Bulletin*, February 1963, pp. 26 and 27.

[3] For States with average monthly payments over $70, the Federal Government participates in the expenditures in excess of that amount

of aid to families with dependent children is similar in structure to the formulas for the other programs but the Federal share of the first part of the formula is fourteen-seventeenths of the first $17 of the average monthly payment per recipient, and the maximum amount subject to Federal participation is $30 times the number of recipients.[4]

State Maximums on Assistance Payments

Through October 1962 no State had adopted a maximum on the average monthly payment per recipient despite the use of the averaging principle in the Federal maximums beginning with October 1958. For each of the special types of public assistance, however, the States that had maximums on individual payments prior to the 1958 Public Assistance Amendments largely continued such maximums.

The number of States having maximums has been declining gradually in recent years under each of the programs. Despite this trend, however, in October 1962, for each program, a majority of States still applied a maxi-

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except that such participation is limited to the amount of the average vendor medical payment, with a maximum of $15. Thus, the Federal maximum may extend to $85 times the number of of recipients. The Federal share in the excess expenditure consists of from 50 percent to 80 percent (depending on the State's per capita income). For States with average monthly payments of $70 or less, the additional Federal share in average vendor medical payments up to $15 is 15 percent. The additional Federal share of 15 percent also is available to States with average monthly payments over $70 when it is advantageous to them as an alternative to the method described above.

[4] For Guam, Puerto Rico, and the Virgin Islands, the matchable average payment is $37.50 per recipient in aid to the blind and aid to the permanently and totally disabled; $37.50 per recipient plus the amount above $37.50 spent for vendor medical payments up to $7.50 per recipient in old-age assistance; and $18 per recipient in aid to families with dependent children. For these jurisdictions, the provision for relating part of the Federal share to the fiscal capacity of the States does not apply. The Federal share is 50 percent of total payments within the specified maximums. There is also a limitation on the total amount of Federal funds that can be paid annually.

mum to the amount of the money payment made to individual recipients or to families. The number of States applying maximums as of that month was as follows: old-age assistance, 31; aid to the blind, 31; aid to families with dependent children, 29; and aid to the permanently and totally disable, 27.[5] Some States make exceptions to their maximums when recipients require medical care or have other special needs, and in some States maximums are high enough that they limit payments to relatively few recipients. Since the usual State maximums shown in tables 1 and 2 relate to money payments to recipients, they exclude the amounts of monthly premiums paid in behalf of recipients into pooled funds for medical care in States operating such funds, as well as other types of vendor medical payments in behalf of recipients.

Reductions in Assistance Payments

When States are unable to meet need as determined under their standards they reduce payments on a percentage or flat reduction basis (table 3). These types of limitations may be used in the absence of, or in conjunction with, legal or administrative maximums. A maximum limits the amount of assistance that may be paid to persons whose determined need exceeds that maximum, whereas percentage or flat reductions usually have the effect of lowering payments to most or all recipients to a level below that of determined need. In October 1962, percentage or flat reductions were being applied by 12 States to monthly payments under 26 programs. Three States applied such reductions to all four programs; one, to aid to families with dependent children, aid to the permanently and totally disabled, and aid to the blind; three, to aid to families with dependent children and aid to the permanently and totally disabled; and five, to aid to families with dependent children only.

[5] California has a maximum of $106 on the monthly payment to the individual recipient and in addition provides that total payments in a fiscal year may not exceed an average of $100 per recipient per month.

TABLE 2

AID TO FAMILIES WITH DEPENDENT CHILDREN: USUAL MAXIMUMS ON MONEY PAYMENTS AND EXCEPTIONS TO SUCH MAXIMUMS, STATES HAVING MAXIMUMS, OCTOBER 1962[a]

State	Usual Maximum Per Month For — Adults: First	Adults: Second	First Child	Each Additional Child	Family	Payments May Exceed Usual Maximum(s) For—
Alabama[a]	—	—	$32	$23	$124	—
Alaska	$30	—	50	30	—	—
Arizona	—	—	80	27	220	—
Arkansas:						
With adult	6	—	32	18-10-12-9	105	—
No adult	—	—	32	18-10-12-9	99	—
California	—	$17	145	23-47-41-35-29-23-17-11-5	—	Special needs if paid from local funds.
Delaware	—	—	75	12-12-12-10-10-10-9	150	—
Florida	—	—	32	23	81	—
Georgia	25	—	34	25	134	—
Indiana:						
With adult	32	—	32	23	—	Medical care.
No adult	—	—	50	23	—	Medical care.
Kentucky[a]	—	—	—	—	160	—
Louisiana	—	(*)	72	19-17-17-12-18	155	Special needs, medical or dietetic—to $160. Special medical allowance for ill or handicapped child—to $255.
Maine	32	—	32	30	*250	—
Maryland	—	—	—	—	*230	Special items in emergency situations.
Michigan	(*)	(*)	(*)	(*)	240	—
Mississippi[a]	—	—	25	15-10	90	—
Missouri	*32	—	32	23	—	Completely bedfast and totally disabled recipients—to $100.

Nebraska	—	—	100	15-15-15-10	—	—
Nevada	30	—	30	30	—	20 percent of unmet need.
New Mexico	—	—	—	—	190	—
Oklahoma	(*)	(*)	(*)	(*)	238	—
South Carolina	—	—	27	18	99	—
Tennessee:						
With adult	25	—	25	15	100	—
No adult	—	—	25	15	85	—
Texas:						
With adult	—	—	54	22-18-13	107	—
No adult	—	—	35	26-23-19	107	—
Utah	(*)	(*)	(*)	(*)	—	Hardship cases; restaurant meals, board and rooms, housekeeping services, nursing home care plus small allowance for personal needs—to specified higher maximums.
Vermont	45	—	45	25	—	—
Virginia[2]	—	—	—	—	175	Special needs if paid from local funds.
Washington[2]	—	—	—	—	325	Prevention of undue hardship.
West Virginia[2]	—	—	—	—	[9]165	Recurrent items for chronic illness and expenses related to Community Works and Training Program.
Wyoming	(*)	(*)	(*)	(*)	230	—

[1] September data for Arizona, Nevada and New Mexico.

[2] See table 3.

[3] If both parents (or parent substitutes) are included in assistance unit, the second parent only is given same consideration as an additional child in determining applicable maximum.

[4] Assistance plus other income cannot exceed $300.

[5] Represents maximum in highest of three cost areas in State; other maximums are $220 and $210.

[6] Maximums expressed in terms of number of persons in assistance unit as follows: for Michigan 1 or 2 persons $120, each additional person $20 to family maximum of $240; for Oklahoma from 1-9 or more—$32, $114, $141, $163, $185, $202, $218, $231, $238; for Utah for all assistance in cases of 1-10 persons—$81, $130, $154, $174, $194, $213, $232, $245, $258, $272; for cases with more than 10 persons, $272 plus $13 for each person in excess of 10; and for Wyoming 1—$100, 2—$170, 3 or 4—$200, 5, 6, 7—$215, 8 or more $230.

[7] When there is an employable person in the household, payment is limited to maximum based on number of eligible children in the case.

[8] Represents household maximum for related persons.

EXHIBIT D

Interim Policy

May 31, 1968

Need — Requirements
For State Public Assistance Plans

Table of Contents

A. General

B. Standards of Assistance

C. Income and Resources — OAA, AFDC, AB, APTD, AABD

D. Disregard of Income Common To OAA, AFDC, AB, APTD, or AABD

E. Disregard of Earned Income — Definition

F. Disregard of Earned Income Applicable Only to OAA, APTD, or AABD

G. Disregard of Income and Resources Applicable Only to APTD and AABD

H. Disregard of Income and Resources Applicable Only to AB, and AABD

I. Disregard of Income Applicable only to AFDC

U. S. Department of Health, Education, and Welfare
Social and Rehabilitation Service
Office of the Administrator

Interim Policy

3. Requirements for State Plans:

A State plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

A. *General:*

Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way, except where specifically authorized by Federal statute.

B. *Standards of Assistance:*

1. Specify a State-wide standard, expressed in money amounts, to be used in determining (i) the need of applicants and recipients and (ii) the amount of the assistance payment.
2. Provide that by July 1, 1969, a State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.
3. Provide that the standard will be uniformly applied throughout the State.
4. Include the method used in determining needs, which must be one of the three methods described in "Guides and Recommendations" or a comparable method which meets the conditions specified in such guides and is approved by the Assistance Payments Administration.

* * * * * *

United States District Court For The District of Maryland

Excerpts from

EXHIBIT E TO DEFENDANT'S "MEMORANDUM IN SUPPORT OF MOTION TO AMEND FINDINGS OF FACT AND JUDGMENT OR IN THE ALTERNATIVE TO TAKE ADDITIONAL TESTIMONY, OR FOR A NEW TRIAL OR IN THE ALTERNATIVE TO ALTER OR AMEND THE JUDGMENT". Excerpts from minutes of State Board of Public Welfare Meetings (full text of minutes is part of record on appeal).

Excerpts from meeting of February 2, 1945
(minutes, pages 5 and 6)

XIX. Amendments to Public Assistance Laws suggested by City Department Advisory Board.

The Director reported that the Advisory Board of the City Department had suggested ten amendments for changes in the Public Assistance laws, and the Director of the City Department had written that "it would give a great deal of satisfaction to our Board to sit down to discuss these suggestions with you and your Board at any convenient time." Briefly summarized, these suggestions are as follows:

1. Removal of ceilings from OAA, ADC and ANB
2. Change of residence requirements for OAA to that for GPA
3. Repeal of provision requiring U. S. citizenship
4. Shifting risk of fluctuating payments and enforcement of court order to the State, and not the applicant, with respect to support of parents by children.
5. Granting ADC to any child in distressing financial need, instead of to those children now specifically mentioned in the laws; subject, however, to provision that it should be given only to the family where there are no work opportunities available to the employable members.
6. Changing the ADC law to permit grants to children in need, and not limiting them to children living with certain relatives
7. System of Equalization as between State grants to local units
8. Public Assistance program without categories, but based upon actual needs of individuals. (They recognize that such program would have to be initiated by the Federal Government in changing provisions of the Social Security Act)
9. Pending abolition of categories, participation by Federal Government in all categories.
10. 1-year residence requirement for Public Assistance — to be accomplished by cooperative action among various states.

Judge Waxter was informed that the legislation sponsored by this Department had been submitted to the Legislative Council and discussed with local executives and chairmen at their meeting last Spring, and copies mailed to all local departments; and, further, that bills have been introduced in the Legislature covering these recommendations, with a few exceptions.

Excerpts from meeting of April 11, 1958
(minutes, page 2)

6. Report Re: Eliminating $180 Ceiling on Assistance Grants

A report was given on the overall $180 ceiling on assistance grants. A copy of the written report is filed with the original of these minutes. The matter was discussed at length by the Board. It was pointed out that it would cost an estimated $76,200 a year in State money to remove the ceiling. No action was taken, but the matter was to be discussed with the Governor.

Excerpts from meeting of August 22, 1958
(minutes, pages 1 and 2)

5. Report Re: Eliminating Maximum Amount of Assistance Grants

The matter of the $180 maximum on assistance grants was considered. A circular letter had been sent to each of the local welfare departments asking their opinion as to what should be done about the $180 maximum. Of the twenty replying:

a. Twelve favor elimination of any maximum, believing the standards represent maximum enough. (Allegany, Anne Arundel, Baltimore City, Calvert, Caroline, Frederick, Harford, Kent, Montgomery, Queen Anne's, St. Mary's, Washington)

b. Eight question the removal of a ceiling, but it is interesting that most of these give as a reason the

fact that none of their cases now exceed the present or recommended ceiling. Three (Worcester, Somerset and Dorchester) recommend keeping the present ceiling. Four (Baltimore, Charles, Garrett and Prince George's Counties) recommend raising it to $200. One (Carroll) recommends raising it to $210.

On the basis of the above the Board directed the staff of the Department to consider the matter and to bring back to the September meeting a recommendation for a higher ceiling, or alternative recommendations if the same seems desirable.

Excerpts from meeting of September 26, 1958
(minutes, page 1)

3. Proposals Re: Maximum Amount on public Assistance Grants — Revision of Rule 200 (II)
There was distributed to the members a memo setting out four proposals dealing with the maximum public assistance grants to families, copy of which is filed with the original of these minutes. After full discussion the Board unanimously adopted, on motion made and carried, the fourth proposal, which increased the maximum allowable in any one grant from the present $180 to $210 under Plan A; $200 under Plan B; and $190 under Plan C, depending upon the local units. That is, the highest cost areas such as Baltimore City and the large metropolitan areas would have a ceiling of $210, etc. The effective date of this increase is November 1, 1958, and involves revision in Rule 200 (II), copy of which is filed with the original of these minutes, and which is to be issued subject to the approval of the Attorney General as to legality.

* * * * * *

Attachments to minutes of meeting of September 26, 1958
Prepared for State Board — 9/26/58

Re: Maximum amount on Public Assistance Grant

Following are 4 possibilities to be considered:

1. Under increase in Standards already approved and issued to be effective 10/1/58, the maximum would be raised from

   $180 to *$185*

   Additional Monthly *Cost*: (already included in estimate for increased standards)

2. Since standards set a maximum based on need; since the majority of local departments recommend elimination of any overall maximum; and since the 1960 budget request is based on no maximum it is recommended that there be *no maximum.*

   *Additional *Monthly Cost*: *$7,000* Total *$3,500* State

3. The majority of families are 10 or under. Basic needs (without special diets if needed) for a family of 10 would amount to:

	Plan A	B	C
Subsistence	$185.00	$184.00	$179.50
Shelter (Max.)	45.00	31.00	25.00
School Supplies & Ins. Prem.	5.00	5.00	5.00
	$235.00	$220.00	$209.50
Max. rounded off to $10 intervals	*$240*	*$220*	*$210*

   *Additional *Monthly Cost*: *$6,550* Total *$3,275* State

4. Of the families receiving the present maximum about 1/3 have 9 or more persons. Basic needs for a family of 8 would amount to:

	Plan A	B	C
Subsistence	$158.50	$157.50	$153.00
Shelter (Max.)	45.00	31.00	25.00
School Supplies & Ins. Prem.	4.00	4.00	4.00
	$207.50	$192.50	$182.00

Max. rounded off to $10 intervals	*$210*	*$200*	*$190*
*Additional *Monthly Cost*:	*$4,900* Total		*$2,450* State

* Cost estimates are approximate since we only know how many are at maximum and not how much "need" might be over the maximum. Total cost for this fiscal year would depend on effective date of any change and when the change became effective on all cases now at maximum.

Maryland State Planning Commission Newsletter for September 1958 gives for each County amount of "disposable income (income after taxes) per household" for 1957. These average from $4,158 annually in Queen Anne's to $9,381 annually in Montgomery. The percentage of households with incomes (after taxes) under $2,500 ranges from 8.5% in Montgomery to 31.7% in Queen Anne's. The Eastern Shore counties, Calvert and Garrett have about 25% of households under $2,500. These figures do not take into account income in kind, such as is generally available to farm families.

Therefore, it appears that none of the proposals would set a maximum out of line with household incomes throughout the State.

For Consideration — 1960 Budget
State Board, Friday, July 18, 1958

For Public Assistance standards the following items need to be considered (Percentage increases in items, based on Cost of Living Index figures):

1. Change-over to new basis for food standards as proposed for 1959 Budget brought up to May 1958 prices. (Cost of Living Index for food shows 15.2% increase over December 1950 prices. For current standards this leaves 13.2% increase in addition to the 2% allowed in the 1959 budget.) This is based on latest

material from U. S. Department of Agriculture after research in food consumption patterns of low and moderate income families. This change-over would increase average grant about $5.50.

	Total	*State Funds*
Estimated annual cost based on June caseload	*$3,054,000*	*$1,975,000*
2. Shelter costs increased 5.7%		
Estimated annual cost based on June caseload	*$ 58,000*	*$ 35,000*
3. Utilities increased less than 3% — no action recommended.		
4. Clothing and personal care costs increased since last adjustment.		
Apparel — 8.7%; Personal care items — 29.4%.		
Estimated annual cost based on June caseload	*$ 395,000*	*$ 268,000*
5. School supplies — review of costs since last standard (1951) was set would indicate need to increase for elementary school child from $.25 to $.50 monthly; and for junior and senior high school child from $.50 to $1.00 monthly. This would amount to an average of about $.15 per ADC recipient.		
Estimated annual cost based on June caseload	*$ 54,000*	*$ 40,000*
6. Maximum amount of $180.00 — A circular letter has been sent to get opinion of each local welfare board. Replies		

are not due until July 31st in order to give all boards a chance to consider it. Of 8 local departments replying: 5 recommend elimination of the maximum (Calvert, Kent, Frederick, Montgomery and Anne Arundel); 2 recommend no change in present maximum (Worcester, and Somerset); and 1 recommends keeping a maximum but increasing the present one to $210 (Carroll).		
Estimated annual cost to eliminate based on June caseload	*$ 76,750*	*$ 76,750*

State Department of Public Welfare

To: Miss Howlett

From: Nina Dressel Date: July 17, 1958

Subject: Maximum Grant — Estimate of Cost for Removal of Maximum

The estimate of $76,200 per year made in March 1958 was based on an average monthly caseload of 7,162 assisted families (the number of families assisted in February).

In June 7,399 ADC families were assisted. This is an increase of 3.3% in estimated number of cases affected by removal of the "maximum". This then would increase the annual cost by $2,515 or $77,715 in all.

The above amounts represent State funds. The increase raises the average grant per recipient by $0.42 (or 21¢ in State funds) assuming Federal participation.

March 21, 1958

To: Mr. Waxter

From: Miss Howlett

$180 Maximum On Assistance Grants—Your Memo of 3/12/58

History

1936 to 1946

The history with regard to maximum amounts begins with our holding to the federal maximum. As GPA was made available in the local departments there began to be supplementation of such maximum amounts. In 1946 we discontinued holding to the federal ADC maximum which in effect did away with "supplementation to ADC". We had meantime established uniform standards state-wide.

1947 to 1952

Due to limitation of funds beginning July 1, 1947, we issued uniform standards and included maximum amounts for ADC and GPA families by size of family running up to $170 as the maximum for any size family. In June 1948 we set forth these maximum amounts by local department as being a more fair way of distributing the effect of inability to meet full standards. The most restrictive was when we had the maximum amounts by local department and by size of family. The maximum on categories other than ADC remained at $55 with the exception of cases needing nursing care. As funds were available to relieve the maximum amounts, we went back to an over-all ADC maximum but set by groups of local departments. In December 1950 these ranged from $120 to $150. In January 1952 we changed to three groupings with the ADC maximum ranging from $145 to $165. In September 1952 we set for the first time an over-all maximum of $175 on any assistance grant. This for the first time did away with the federal maximum for APTD, OAA, PANB, pointing out that the needy spouse or others would no longer have to receive GPA and it would be a saving administratively as well as assuring the fullest benefit from federal matching.

1952 to Present

This policy of one over-all maximum has been followed since 1952, the amount being raised to $180 when we increased standards in 1956. The amount for an over-all maximum was determined in relation to information about wages. We last reviewed this in August 1957 finding that the State average weekly wage was $72.20 or about $310 monthly. The lowest average weekly wage was $36.79 ($158 monthly) in Somerset County and the highest $87.93 ($378 monthly) in Baltimore County. This information came from the Maryland State Department of Employment Security as figured for "State Insured Employment" from July 1955 — June 1956.

A maximum does leave certain families, either because of size or special needs, without the money necessary to get proper food, shelter and other items. On the other hand there is considerable reaction to an assistance grant being above what some families are able to earn with similar situation as to size and special needs.

Estimate of Cost

Mrs. Dressel estimates that to eliminate the maximum would cost a total of $9,015 monthly from all funds or $6,350 monthly in State funds. This is based on the February 1958 caseloads.

Although we do not have specific information as to how much above $180 grants would go, we do know the number of families whose present grants are at $180 and therefore assume they would go above if the ceiling was lifted. As of September 1957 there were 272 such ADC cases throughout the State. The majority were cases with 6 or 7 children in addition to 1 or both parents. (88 families with 6 children and 78 families with 7 children). The largest families (6) had 11 children and 11 families had 10 children.

If we take the largest family reported, 11 children and 2 adults, the grant under current standards would come to about $252 in A local departments; $245 in B; and $234 in

C. If any of these needed special diets such as for malnutrition it is possible that such grants would amount to $300 or more.

For the 6-child family the present standards exclusive of special needs such as special diets, would not put the grant much above the maximum. For A counties about $198; for B counties $189 and for C counties $180. These amounts of course would increase with any increase in basic standards.

State Department of Public Welfare

To: Miss Howlett March 14, 1958

From: Nina Dressel

Re: Maximum Grants — Estimate of Cost for Removal of Maximum

In September 1957, there were a total of 272 ADC families receiving the maximum grant of $180. (There were a few families which received more than $180.00 for emergency reasons.) We would not know whether any of the 272 received emergency grants during September or whether the full grant was $180.00 and consequently would not be affected by removal of the maximum. There was a one-child case in Baltimore City and a 3-child case in Baltimore County which could not receive more than $180.00 by our standards, unless we included both parents, insurance, school supplies, laundry, and special diets for every member of the family.

Number of Families Receiving $180.00 in September 1957

Total number	272
Number of families with one or two adults	269
Having 1 child	1
" 3 children	1
" 4 "	3

Having 5 children	24
" 6 "	88
" 7 "	78
" 8 "	34
" 9 "	23
" 10 "	11
" 11 "	6
Number of families with no eligible adult	3
Having 7 children	2
" 11 "	1

Estimated Increase in Cost to Remove Maximum

If estimate is based on the September 1957 Distribution of Payments and the following assumptions the total cost per month from all funds would be $9,015:

1. All cases received the maximum for shelter, insurance, and school supplies.
2. Both parents included in the grant.
3. No additional allowance for special diets or laundry.
4. Number of cases affected by maximum would be increased by 8% (the increase in number of ADC cases in February 1958 over September 1957).

There should be Federal matching in one-half of the increase for all families having 7 or more children; this would reduce the cost per month in State funds to approximately $6,350, or $76,200 per year for an average monthly caseload of 7,162 assisted families.

If we could assume that there would be only one parent in these cases and no allowances made for special diets or laundry, the increase in cost per month for 7,162 families might be as low as $5,225 with Federal participation in one-half of it — a cost in State funds of $2,613.

Therefore the estimated increase would range from a minimum of $2,615 to $6,350 per month in State funds for the February 1958 caseload.

State Department of Public Welfare

March 12, 1958

From: Mr. Waxter

To: Miss Smith
Mr. Hunt
Miss Howlett
Miss Olson
Miss E. Lankford

Re: Development of Material

As a result of our discussion this morning, it is my understanding that we will develop as rapidly as possible the following material:

1. Miss Howlett is to estimate the money involved in removing the $180 ceiling on assistance grants. She will also give us the background and justification for the ceiling.
2. Miss Olson will discuss with Mr. McManus the material that the private agencies want as to cost incurred by the Department of Welfare in child placement. This involves not only cash payments, etc. to foster parents, but also the possibility of service costs exclusive of administration.
3. Miss Olson is to find out the cost of permitting private agencies supplementation of purchase of care rates paid to institutions for particular children needing special care. She is also to develop the philosophic base of the present Rule which forbids such supplementation.

State Department of Public Welfare

To: Miss Smith Date: 8/26/57

From: Nina Dressel

Subject: Farm Wages — Mr. Forsythe's Material on Farm Wages 1956

Seasonal Planting and Harvesting of crops —
Wage: 75 cents to $1.00 per hour

Farm hand (usually a single man who gets room and board in employee's house) — approx. $35 per week.

Year-round farm workers (married men with families) get approx. $160 per month plus house and electricity plus some other extras such as milk and eggs, hog meat, etc. ($160 is most usual figure given; range is $150 — $200).

State Department of Public Welfare

August 26, 1957

To: Miss Smith

From: Nina Dressel

Re: Weekly Earnings in Employment

The average weekly wage for state-insured employment from July 1955-June 1956 was $72.20 for the State.

The average weekly wage for state-insured employment ranged from $36.79 in Somerset County to $87.93 in Baltimore County from July 1955-June 1956. The average weekly wage by local unit was:

Allegany	$67.82
Anne Arundel	70.55
Baltimore	87.93
Calvert*	46.08
Caroline*	50.26
Carroll	55.45
Cecil	58.69
Charles*	56.48
Dorchester	46.86
Frederick	53.57
Garrett*	46.15
Harford	57.09
Howard*	57.78
Kent*	46.83
Montgomery	67.65

Prince George's	69.29
Queen Anne's*	43.02
St. Mary's	49.90
Somerset*	36.79
Talbot*	49.33
Washington	71.76
Wicomico	55.73
Worcester	46.23
Baltimore City	$73.38
State	$72.20

* The shelter allowance would be $6. a month (or $1.38 per week) less than the budgets for Plan B departments.

In June 1957 the average weekly earnings for production workers in manufacturing industry in the State was $83.62 — an increase of $4.16 over the average weekly earnings in June 1956.

Source: Maryland State Department of Employment Security.

State Department of Public Welfare

Date: August 26, 1958

To: Miss Howlett

From: Mr. Waxter

Subject: Maximum Amount on Public Assistance Grants

I reported to the Board at the meeting on August 22nd, the replies received from local welfare departments re elimination of the maximum amount on public assistance grants, as set out in your memo of August 15th.

The State Board directed that we bring back to the September meeting a recommendation for a higher ceiling, or alternative recommendations if, after consideration, the same seems desirable.

August 15, 1958

To: Mr. Waxter

From: Miss Howlett
Elimination of Maximum Amount on Public Assistance grants — Local Department Replies

The circular letter of 6/27/58 asks for local welfare board opinion about removal of maximum amounts ($180 and $100 GPA-E).

Cecil and Wicomico have not replied. Howard and Talbot have not been able to clear it with Board and therefore, have sent no opinion. All other local departments have replied expressing some opinion, although a few indicate that they will discuss it further when they can have full Board meetings (Charles, Kent, Washington).

1. *Removal of $180 maximum.*

   Of the twenty replying:

   a. Twelve favor elimination of any maximum believing the standards represent maximum enough. (Allegany, Anne Arundel, Baltimore City, Calvert, Caroline, Frederick, Harford, Kent, Montgomery, Queen Anne's, St. Mary's and Washington).

   b. Eight question the removal of a ceiling, but it's interesting that most of these give as a reason the fact that none of their cases now exceed the present or recommended ceiling. Three (Worcester, Somerset and Dorchester) recommend keeping the present ceiling. Four (Baltimore County, Charles, Garrett and Prince George's) recommend raising it to $200. One (Carroll County) recommends raising it to $210.

It seems to me that those which see keeping a ceiling but have all cases within the ceiling are in effect wanting families to receive full need, but still have some psychological reason for having a ceiling in the policy.

2. *Removal of $100 maximum on GPA-E.*

   a. Since most local departments aren't administering this, they made no specific comment. However,

five (Anne Arundel, Frederick, Harford, Montgomery and Queen Anne's) thought it should be eliminated completely on the same basis as elimination of any maximum.

b. Baltimore City thought we should eliminate a ceiling but limit the standards to the essentials of food, shelter and household maintenance, omitting any allowance for clothing and other items. Dorchester believed the maximum should be raised to the $180 which they also want to keep for any grant.

c. Two counties (Baltimore and Caroline) believe the present maximum of $100 should be kept.

Note — I am referring on to Mr. Hodes those replies which included some estimate of cost if the GPA-E maximum is raised from $100 to $180. I assume he will prepare the estimates you may want for further consideration of this by Board.

State Department of Public Welfare

June 27, 1958

To: Directors, Welfare Departments

Re: Maximum Amounts on Public Assistance Grants

1 — $180. Maximum (all categories but GPA-E)

At the State-wide meeting in April, it was suggested that local boards consider further the $180 maximum. In planning for preparation of the 1960 budget, we would like to have from all local boards some opinion about this. Will each local director consider this with Board and let us know what the opinion of each Board may be.

Since 1952 we have had one overall maximum on an assistance grant, thinking that an assistance grant should not go higher than the lower wages in a community. Figures from the Maryland State Department of Employment Security show State average weekly wage of $72.20

or about $310 monthly. This is based on figures for "State insured employment" from July, 1955 to June, 1956.

There is no doubt that a maximum leaves certain families without money necessary to get proper food, shelter and other items. This is either because of the size of the family or special need. Assistance standards themselves set a maximum and are based on what would be considered minimum adequacy for each size family.

Would your board recommend doing away completely with the overall maximum? If not, what maximum do they believe would be appropriate? Would you give us some brief statement of the basis for any recommendation you make. Attached is a letter from the Maryland Commission for the Prevention and Treatment of Juvenile Delinquency which may be of interest to your board.

2 — $100. Maximum (GPA-E)

With the recent unemployment situation and families needing GPA-E for a longer period of time, the $100 maximum has seemed to work considerable hardship on some families. The question is whether we should control this by the same maximum applicable to other categories.

Will *those local departments now granting GPA-E* give us information with regard to this ceiling. Let us know not only your opinion about continuing the present maximum but also an estimate of what additional costs there would be on your present cases if there was not a maximum. This would mean taking any current recipients or possibly using those who received an amount in May and estimating additional costs if there had been $180 rather than $100 maximum.

May we have your replies by July 31.

Sincerely yours,

THOMAS J. S. WAXTER,
Director.

Maryland Commission for the Prevention and
Treatment of Juvenile Delinquency
120 West Redwood Street
Baltimore - 1, Maryland

June 20, 1958

Dr. Alvin Thalheimer, Chairman
State Board of Public Welfare
American Building
Baltimore 2, Maryland

Dear Dr. Thalheimer:

On March 10, 1958 you wrote us that the State Board of Public Welfare is giving consideration to the State Commission's recommendation concerned with elimination of the $180.00 ceiling on ADC grants.

We would appreciate it very much if you could inform us whether the State Board has taken any action in the meantime. We are extremely concerned with the effects of the existing policy on the children of larger families depending on public assistance for their livelihood.

As of September 1957, 272 families in Maryland were affected by this ruling last year. The number of children included in these substandard grants was 1790. The result is alarming. It really means that this policy deprived 1790 children of essentials for their normal development.

You stated in your letter that the whole matter of ceilings on grants is a very delicate one and one to which a good deal of attention has been directed. We believe very strongly that when families have been found eligible for public assistance, they should receive the whole amount to which they are entitled according to the standards for subsistence, for rent and for any others items which may be included in their budget. We feel that the Public Welfare Department should not be handicapped in setting its policies by those forces in the community which, out of ignorance, selfish interests or prejudice, may want to deny the very minimum of economic security to the poorest

families in our midst. Perhaps the State Board, together with the local boards, would want to consider a program of educating the community and of illustrating effectively the detrimental results of this policy.

I think we all agree that economic hardship is one of the causes of family breakdown and that the serious deprivation which the children of these families suffer is a contributing factor to juvenile delinquency. It ultimately costs the community and the State far more to try to remedy the effects of this policy than it would cost to give these families the full public assistance grants due to them.

The members of Action Committee I feel so strongly about this matter that we would appreciate it if the State Board could give us some time to discuss this problem. I am certain that the State Commission as a whole will stand ready to help the State Board in every way possible to affect a change of the present policy.

Very sincerely yours,

/s/ F. Reid Isaac,
Dr. F. Reid Isaac, Chairman,
Action Committee I.

March 10, 1958

Dr. F. Reid Isaac, Chairman
Action Committee I
Maryland Commission for the Prevention and
Treatment of Juvenile Delinquency
120 West Redwood Street
Baltimore - 1, Maryland

Dear Dr. Isaac:

Under date of February 24th you wrote as Chairman of a Committee of the Maryland Commission for the Prevention and Treatment of Juvenile Delinquency, relative to the matter of the ceiling of $180 on public assistance grants, and suggested that the Board of the State Department of Public Welfare reconsider this policy.

First let me thank you for the interest that your Committee has in this problem. Consideration will be given to it, and the Board is having prepared certain material as to costs, etc.

The whole mater of ceilings on the grants is a very delicate one, and one to which a good deal of attention has been directed.

The Board has asked me to advise you of its interest and to thank you for writing.

Sincerely,

DR. ALVIN THALHEIMER, Chairman
State Board of Public Welfare.

EXHIBIT F

Report

of the

Legislative Council Committee

on

Public Welfare Cost

October, 1966

Welfare Committee Report

Purpose:

This Committee was appointed last year to determine the reasons for the rapid rise in welfare costs and to recommend the ways and means by which those rising costs could be reduced without depriving deserving individuals or families of public assistance. As a result of its findings and recommendations and the passage of Senate Joint Resolution No. 47 by the 1966 General Assembly, it was reappointed to continue its surveillance of the State Welfare program and to "consider changes in Federal welfare requirements to allow the States to make reasonable inquiry into the use made by welfare recipients of the monies paid

to them for welfare assistance." When and if changes to federal regulations had been determined, the Committee was to meet with the Maryland Senators and Congressmen to obtain their aid in implementing the changes.

Action Taken:

The Committee met six times to hear testimony pertinent to its objective and held a final meeting to review its findings and decide upon the action it would recommend to the Legislative Council.

Findings:

Present federal regulations prohibit the State Department of Public Welfare from requiring welfare recipients to spend public assistance monies for the purposes intended. (Exhibit A). Should such action be taken by the State Department of Public Welfare, federal funds would be withheld from the State.

The suspicion that many welfare recipients were spending public assistance payments for things other than food, rent, and clothing was explored and in some cases found to be justified. (Exhibits B, C, and D).

The public assistance payments to welfare recipients are, in some instances, inadequate to their needs, particularly housing. This forces the recipient to spend a part of his food and clothing allowances for rent. Although this might be applied to all welfare categories, particularly in Baltimore City, it is obviously true of the larger families receiving public assistance under the Aid to Families with Dependent Children (AFDC). This was supported by the information given to the Committee by the organization of welfare mothers known as "The Rescuers from Poverty." Their statement of actual costs, the State Department of Public Welfare estimate of their needs, and the allowance authorized are shown in Exhibit E. In addition, the welfare mothers requested a special clothing allowance for themselves and their children three times a year, claiming the present allowance was inadequate, particularly prior to be-

ginning the school term. They consider the Donable Foods program inadequate to their needs and request the establishment of a Food Stamp program which would enable them to purchase fresh food at a discount. They want training as social workers, teachers, and community organizers. They want investigations by the welfare workers stopped and the abolition of the prohibition against having a boyfriend. They want payments twice a month instead of once a month.

The Welfare Department, in response to a suggestion that the cycle of dependency upon welfare might be broken if the children could be placed in foster homes, stated that the present average payment of $82 per child in the City and $72 in the Counties was inadequate to attract more foster parents into the program. This was stated as being particularly true in the case of teenagers. In the opinion of the Welfare Department this foster care allowance should be increased to $78 per month per child under 6 years old; $99 per month per child between 6 and 12 years old; $114 per month per child over 12 years old.

Welfare Department officials stated that the present limit on the amount of earnings welfare recipients may retain is inhibiting their return to full employment status. At present this amounts to $10 per month above the total amount estimated by the Welfare Department as their minimum required plus expenses (lunches, carfare, etc.). Attempts to increase this have met with objections at the Federal level where Health, Education, and Welfare officials claim that increasing the retention of earned income by welfare recipients will increase Federal costs because the HEW estimates of Federal cost are predicated upon the assumption that a certain amount of earned income will offset the Federal and State costs.

Members of the Board of Welfare and the Welfare Department feel that it would encourage more people to seek employment if they were able to retain more of their earnings than the present $10 per month to augment the Department's estimate of their minimum needs.

Birth control, or Planned Parenthood, information is disseminated to all AFDC parents by the social workers. A birth control clinic has not been established because of the lack of funds. Even if one or more clinics were established, welfare clients could not be required to use such facilities even when the mother had given birth to several illegitimate children.

Rehabilitation Training under Title V of the Social Security Act is proving to be successful in the training of nurses aides, gardeners, etc. but Day Care Centers are needed to care for the children involved. The Welfare Department will request additional funds in their 1968 Budget request to establish more Day Care Centers. In the meantime, they are encouraging some mothers on AFDC to care for the children of other mothers on AFDC who are either in training or employed.

Individuals receiving assistance under the General Public Assistance program are those who have some type of physical disability which prevents them from taking employment. The disabilities consist of tuberculosis, alcoholism, paralysis, epilepsy, etc. These individuals are being re-examined now that the fee has been increased from $2.50 to $10.00 and a statistical profile is being prepared to show the percentage in each type of disability. Those no longer disabled will be placed in the "General Public Assistance — Employable" category and will be required to register for employment with the Maryland State Employment Service. Their status will be reviewed monthly before each check is issued to them.

Positive identification of welfare recipients through the use of Social Security numbers on IBM cards to prevent duplicate payments is being evaluated by the Consultant Firm of Booz, Allen and Hamilton. They are to develop a procedure to minimize the probability of duplication of welfare payments through the use of IBM control cards.

Representatives of property owners renting to welfare recipients claimed that the present $45 maximum allowance for rent is inadequate. They pointed out that this

amount was inadequate to provide housing for a family of five or more people, maintain the property, pay taxes, make modifications directed by City Inspectors and to make a reasonable profit on their investment. In addition, the losses due to damages to their property by irresponsible welfare recipients for which they could not obtain reimbursement and the losses incurred when welfare clients moved without notice and without paying the rent further aggravated their problem. They were unable to collect for such damages because the individual had no resources and were unable in many cases to learn of the whereabouts of the individual from the Welfare Department.

They recommended that the Department of Welfare make direct payments to the landlords of welfare recipients and that the rental allowance be increased commensurate with the size of the family.

The Department of Welfare pointed out that they cannot, under existing federal regulations, make money payments for housing direct to the landlords; these must go to the welfare recipient. Neither can they reveal the whereabouts of welfare clients to anyone other than certain State officials except by order of a court.

The State Commissioner of Health explained the effect of the Medicare Amendment to the Social Security Act as it applies to the Welfare Department. Prior to the Medicare Amendment, the Health Department provided hospitalization and medical care to welfare recipients and presented the bills to the Welfare Department for reimbursement. The Welfare Department transferred the necessary funds to the Health Department and obtained 50% reimbursement from the U. S. Department of Health, Education and Welfare. In other words, the Department of Welfare included the cost of hospitalization and medical care in its annual budget and transferred the funds as required to the Health Department.

Under Medicare, the Department of Welfare will continue to certify welfare recipients as eligible for free hospitalization and medical care but the Department of Health

will pay the bills and obtain the reimbursement from the U. S. Department of Health, Education and Welfare. This will result in a reduction in the budget request of the Department of Welfare and an increase in the budget request of the Department of Health.

Since the reimbursement for such care requires that the care be provided by hospitals meeting the accreditation standards and some of the State Tuberculosis and Chronic Disease hospitals involved may be marginal in this respect, the Commissioner of Health is maintaining close surveillance over the program and maintaining tight liaison with the Regional Office of the U. S. Department of HEW at Charlottesville, Virginia.

In the opinion of the Commissioner of Health, the increased costs of providing the more economical medical care to more poor families will eventually result in the reduction in the more expensive hospitalization costs.

Detection of and prosecution for fraud will be handled by two Attorneys assigned to the Department of Health.

The Department of Welfare reported on the progress they have made in implementing the recommendations of the Booz, Allen and Hamilton report. As rapidly as they can locate qualified individuals for the recommended positions, they are initiating personnel action to employ them. As rapidly as they obtain the qualified personnel, they are establishing functions designed to collect basic data they need to measure the impact of all welfare programs and to determine the efficiency of the management of each. For example, they are responsible for helping individuals and families to become self-supporting, through retraining if necessary yet they have not been able to obtain the basic information as to what the individuals' educational levels are, what aptitudes they have, and what they should be trained in. The additional positions and procedures recommended in the Booz, Allen and Hamilton report will enable them to obtain the information and establish the procedures they need to effectively manage the program.

The Department of Welfare recommended that the bill which failed of passage in the last Session of the General Assembly (H.B. 1207 plus two amendments) because of the lack of time be proposed for passage during the next Legislative Session.

The State Fiscal Research Bureau discussed the matter of aptitude testing, training, and employment of welfare recipients with representatives of the Maryland State Employment Service and presented the Committee with the following results:

a. Testing for education level is done in groups of 10 to 15 individuals at a time and takes 2 to 3 hours.

b. Aptitude testing including counselling to motivate individuals to take training is done on an individual basis and takes longer than testing for educational level.

c. Motivating individuals to take training indicated by educational and aptitude tests is difficult because the individual desires training for "white collar" jobs whereas his test indicates he is insufficiently prepared to absorb such training.

d. As of May 1966 there were 3,752 job openings of all kinds in the Baltimore Metropolitan Area. This is estimated by the Maryland State Employment Service to represent not more than 20% of all jobs available in the area. On this basis, the maximum number of jobs available in the Baltimore area would be 18,760. At the same time there were 26,000 individuals unemployed looking for work in the same area. If all the AFDC parents in the Baltimore area were trained in all the categories of the available jobs ranging from Engineers to Waitresses, there would not be enough jobs available to employ all of them.

e. Because of the difficulty in motivating people to take training for which they are qualified, Maryland

State Employment Service suggested that the Department of Welfare segregate those who are on welfare for the first time and obtain volunteers for testing, counselling and training by Maryland State Employment Service in small groups to increase the probability of success.

f. Past experience of Maryland State Employment Service in this training of youths indicates a need for change in some areas. They trained a group of 16 young men as nurseymen and, in accordance with the Federal instructions, paid them $1.25 per hour during training. On completion of the training the graduates could not find employment with nurseries at more than $1.00 per hour. Needless to say, this experience didn't encourage more people to take such training.

A summary of the status of fathers of AFDC families indicates the following:

Status	*% of Total*
Unemployed	5.0
Deceased	6.3
Incapacitated	18.5
Divorced or separated legally	5.0
Separated without court decree	14.0
Deserting	15.2
Not married to mother	31.3
Imprisoned	4.7
	100.0

The State Department of Welfare reports that there is no recovery of funds spent in the AFDC category except through the Old Age Security Insurance due a deceased parent and from Court action through their Probation De-

partments. This amounted to $1,808,600 in Fiscal Year 1966, when the Welfare Department paid out $43,499,393 including administrative costs for AFDC.

The Committee was told by one of the members of "The Rescuers from Poverty" that she had gone to the Probation Department to get them to help her collect $1,100 overdue on child support payments. They collected $200 and told her to request help from the Welfare Department. She said that she would not be on the Welfare rolls if she could collect the $55 a week her ex-husband was ordered to pay her for the support of their 3 children.

After two years of hearings, the Committee finds itself unable to recommend any specific action which would cause an immediate reduction in the present costs of public welfare without injury to recipients who should be given public assistance. There are, however, some areas in which proper aggressive action can be taken which should result in slowing down the rate of rise.

No reasonable individual would deny help to the elderly, the blind, the disabled, the orphans, the temporarily unemployed, the individual who has an infirmity that prevents him from working full time, nor the widow with minor children who has been left without adequate income to support herself and her children. But the present philosophy of providing public assistance to everyone "in need" without regard to the reasons for their becoming welfare clients living off the labors of the productive element of our society is encouraging a certain element of our society to wilfully violate established social customs in order to qualify for public assistance. This is especially true in the case of two particular categories of welfare recipients: the Aid to Families with Dependent Children and the General Public Assistance programs.

The following table of categories of public assistance for the year 1956 and 1965 reveals the rise in cost in each:

	1956	*1965*	*Increase*
Old Age Assistance (OAA)	$ 5,704,726	$ 7,520,700	31.8%
Aid to Families with Dependent Children (AFDC)	7,172,011	31,525,291	339.5%
Public Assistance to the Needy Blind (PANB)	300,570	331,518	10.3%
Aid to Permanently & Totally Disabled (APTD)	3,189,805	6,343,000	98.8%
General Public Assistance (GPA)	1,079,035	5,996,519	455.7%
General Public Assistance to Employables (GPA-E)	35,348	266,740	654.6%
Foster Care of Children	2,484,844	6,833,281	174.9%
Total	$19,966,339	$58,817,049	194.6%

It is obvious that the AFDC, GPA and GPA-E programs are increasing in cost at a far greater rate than any of the other programs and at a considerably greater rate than the rise in population. The reasons for this disparity become equally obvious when the programs are examined in detail.

In the Aid to Families with Dependent Children, the number of families qualifying for public assistance has risen from 6,251 to 20,184 between 1956 and 1965, a rise of 222.9%. The number of children involved has risen from 19,841 in June, 1956 to 65,984 in June, 1965, a rise of 232.6%.

A survey in December 1964 revealed that of the 61,141 children in the AFDC program at that time, 23,469 or 38.4% were illegitimate.

As of December 1958, there were 8,741 illegitimate children on the AFDC rolls according to Table I, page 143, of the Report of the Commission to Study Problems of Illegitimacy dated December 7, 1961. The annual report of the Department of Public Welfare for Fiscal Year 1958 reveals that there were 23,791 children on the AFDC rolls as of June, 1958. In other words, 36.7% of the total number of children on the AFDC rolls were illegitimate.

Comparing the statistics of 1958 with those of 1964 reveals that the number of illegitimate children rose from 8,741 to 23,469, or 168%.

Article 12 of the Annotated Code of Maryland, as amended, specifies that action may be taken against the father of any bastard child if he can be positively identified or when the person so accused proves to the satisfaction of the court that he is not the father, action can be taken against the mother to require her to provide for the support of the bastard child.

If the action authorized by the law had been taken and aggressively prosecuted it appears to the Committee that the recovery from the individuals guilty of adultery which resulted in the illegitimate birth of children should have been much greater, thus decreasing the tax burden of the productive citizens of this State.

The reasons given for failing to aggressively enforce the law are (1) insufficient personnel in the offices of the State's Attorneys in the political subdivisions; (2) the parties to the act are without sufficient resources to provide the necessary support to the illegitimate child; (3) placing one or both of the parties to the act in jail for failing to provide the support directed by the court only increases State costs because support must be provided to the child by the State and the State must pay for the support of the guilty and incarcerated party or parties to the act; (4) insufficient personnel to follow-up on fathers who fail to comply with the courts' orders to provide support as directed, etc., etc.

In the General Public Assistance category which involves individuals who are unable to work full time because of a partial disability such as epilepsy, tuberculosis, cardiac problems, etc., the increase between 1956 and 1965 has been even greater percentagewise than the AFDC category (455.7% vs. 339.5%).

As recipients of General Public Assistance, these individuals are also entitled to free medical care and hospitalization and are subject to re-examination to determine whether or not their disability is severe enough to warrant their continuation on the public assistance rolls. The fee for such an examination by a private physician has been $2.50 and not too many doctors would agree to perform it

for so small a fee. Recently, this fee has been increased to $10.00 and all individuals are being re-examined to determine the nature and extent of their claimed disability and whether or not they should be continued on the welfare rolls.

In the General Public Assistance — Employable category, which, as the title implies, involves those individuals who are temporarily unemployed and without resources, the cost has risen from $35,348 to $266,740 or 654.6% between 1956 and 1965. The number of families assisted under this program has increased from 40 in June of 1956 to 240 in June of 1965, an increase of 500%.

During an era of the highest economic activity this country has ever known, this rate of rise in employable individuals, is almost unbelievable. Even though, as the Department of Welfare pointed out, this is not a static group containing the same individuals and the fact that they have been able to attain a turnover rate of approximately 70% of the individuals in it, the Committee finds it difficult to believe that everyone in this group is actively seeking employment. Here again the welfare policy on the amount paid is believed to be partly responsible for discouraging these individuals from seeking employment.

For example, a family of five would be entitled to receive the maximum grant of $237.50 per month plus free medical care and hospitalization. If the family provider were working, he would have to receive an income higher than the grant to satisfy his costs of working, i.e., transportation, clothing, lunches, etc. in addition to such fixed deductions as Social Security, City Earnings Tax, etc., which would require him to earn approximately $300.00 a month to equal his welfare payment. If, because of his lack of education or training and experience, he cannot command more than $60.00 a week, or $260.00 a month, he is not inclined to obtain employment since he can get almost the same amount by remaining idle. If he is found to be unwilling to accept employment, the Department of Welfare can stop his public assistance payments. It is con-

ceivable that in such instances, he would seriously consider "deserting" his family so that they could continue to receive the maximum grant and then accept employment at whatever salary he is able to obtain thus increasing his family income substantially. At the same time, the family, as a group, are held at almost the poverty level and find it difficult to improve their lot. The father image is gone and the children, without the guidance they need, cannot be blamed for developing a resistance to establishing authority and becoming juvenile delinquents, thus continuing the poverty cycle.

Conclusions and Recommendations:

The present allowance for Housing is inadequate to the needs of many families obtaining aid under the Aid to Families with Dependent Children program.

> *Recommend that Welfare increase the Rental Allowance to the amount needed to meet the minimum requirements of each individual and family where this action is indicated by a study of available housing costs.*

AFDC mothers contention with respect to the adequacy of the Donable Foods program in Baltimore City and the adequacy of the present clothing allowance requires investigation and corrective action.

> *Recommend that the Department of Welfare re-examine their allowance for clothing and either augment or replace their Donable Food program with a Food Stamp program at the earliest possible moment.*

AFDC mothers appear to want training as Social Workers, Teachers, and Community Organizers.

> *Recommend that the Department of Welfare canvass all AFDC mothers as to the number desiring training and then take appropriate action to provide the training desired.*

Present Foster Care allowances should be re-examined and increased where such an increase will increase the

number of Foster Homes available to care for the children of incompetent, alcoholic, or promiscuous mothers.

Recommend that the Department of Welfare re-examine their allowances for Foster Care and adjust those which will increase the availability of Foster Homes.

The present retention of earnings allowance of $10 per month above the welfare estimated need is insufficient incentive to encourage welfare recipients to seek employment.

Recommend that the Department of Welfare reactivate their request to the U. S. Department of Health, Education and Welfare to permit welfare recipients to retain a larger portion of their earned income above the welfare estimate of the minimum income necessary to adequately support the family.

The present method of dissemination of Planned Parenthood information by the Social Worker is not as effective as that which might be possible by a clinic properly staffed by professional personnel.

Recommend that the Department of Welfare request the funds necessary to establish sufficient Planned Parenthood clinics to satisfy the need for this service.

Rehabilitation Training cannot be expanded appreciably without providing for the care of the children of mothers being trained and during their employment after training.

Recommend that the Department of Welfare provide Day Care Centers or Day Care by some AFDC mothers while those trainable or employable are being trained or employed.

Implementation of the recommendations contained in the Booz, Allen and Hamilton Report appears to be progressing as rapidly as qualified personnel can be employed.

Recommend that the Department of Welfare intensify its efforts to recruit the qualified personnel required in order to implement the recommendations of the

Booz, Allen and Hamilton Report as rapidly as possible.

The Maryland State Employment Service is capable of testing a limited number of welfare recipients to determine their educational level and job aptitudes and to aid in providing the training to qualify them for employment.

Recommend that the Department of Welfare obtain a list of AFDC parents who are on public assistance rolls for the first time, and set up a joint training program for them with the Maryland State Employment Service.

The fathers of children on AFDC who are divorced or legally separated, without a court decree, desertion, or not married to the mother amount to 65.5% of the total. Since the AFDC program cost $43,499,393, of which only $1,808,600 was recovered, a more aggressive policy requiring fathers to provide for their children would reduce State, Federal and Local costs of this program appreciably.

Recommend that more aggressive action be taken by the Welfare and Probation Departments to require fathers to provide adequately for their children.

Since the passage of H.B. 1207, as amended, would further the implementation of the Booz, Allen and Hamilton Report and it was not passed by the General Assembly in the 1966 Session because of the lack of time, *the Committee recommends that it together with Amendment No. 1 be proposed for passage during the next Legislative Session.*

The Committee cannot subscribe to non-prosecution of bastardy cases despite the obvious lack of economies involved. Regardless of the initial cost involved, aggressive prosecution of violators of the law in this type of case must be accomplished and widely publicized in order to put all potential violators on public notice that they will be prosecuted if they elect this course of conduct. To follow the present course of action is to invite a continuation of the present rising trend in the costs of the AFDC program

which amounted to $31,525,291, or 46% of the total net welfare cost of $68,524,308 in Fiscal Year 1965. By failing to prosecute the guilty, the responsible officials of this State are publicly condoning promiscuous behavior and irresponsibility by the least productive element of its population.

In order to ensure that the responsible officials of this State do take appropriate action in all cases of bastardy, it is recommended that the present laws be amended to provide for the prosecution of those public officials responsible for the enforcement of Article 16, of the Annotated Code of Maryland, as amended, who fail to enforce the law and upon conviction that they be removed from office.

While it is still too early to determine the effects of the action to re-examine GPA recipients on the part of the Department of Welfare, *the Committee recommends that this program be aggressively pursued and completed as soon as possible. It is also recommended that these individuals be re-examined on a monthly basis, if possible, to reduce the number on the GPA rolls to the absolute minimum.*

With respect to the AFDC program, the Committee suggests that a new approach to this problem be tried in which the Department of Welfare would take a more generous view of the estimated financial needs of the family which would permit the father to remain with his wife and children and retain all of his earnings as well as continue to receive public assistance so long as the sum of the two did not exceed the Welfare's estimate of his needs, not just to survive, but his needs which would enable him to improve his lot by continuing to work.

While the Committee realizes that this amounts to the concept of a guaranteed annual income to every family, it also recognizes that the present estimates of the needs of families on welfare are minimal and do not provide any incentive to the individual to continue to strive toward a self-supporting status. By providing the incentive to work and stay with his family, the individual is less likely to

abrogate his responsibilities as a father not only in the financial sense of the word, but also in the sense of providing the parental guidance his children need to keep them off the welfare path. The Committee sees no increase in costs to the State in such a program; if anything, the cost eventually should go down.

It, therefore, recommends that the Department of Welfare and the State Board of Welfare review their policy with respect to estimates of the needs of welfare families and determine whether or not an increase would accomplish, in fact, the effects the Committee believes are possible.

EXHIBIT A TO EXHIBIT F

Excerpts from the Handbook of Public Assistance Administration — Department of Health, Education and Welfare

Assistance in the Form of Money Payments

5120. *Interpretation*

"Money payments" are payments in cash, checks, or warrants immediately redeemable at par, made to the grantee or his legal guardian with no restrictions imposed by the agency on the use of funds by the individual.

The provision that assistance shall be in the form of money payments is one of several provisions in the act designed to carry out the basic principle that assistance comes to needy persons as a right. The right carries with it the individual's freedom to manage his affairs; to decide what use of his assistance check will best serve his interests; and to make his purchases through the normal channels of exchange; enjoying the same rights and discharging the same responsibilities as do friends, neighbors and other members of the community. The Social Security Administration's interpretation of "money payments" recognizes that a recipient of assistance does not, because he is in need, lose his capacity to select how, when, and whether each of his needs is to be met.

While the State may, if it chooses, give goods or services to a recipient, no part of the cost thereof may be included in claims for Federal participation in assistance payments. If the State agency pays a recipient a certain sum of money on condition that it be expended for certain designated goods or services, the action is legally equivalent to actually furnishing such goods or services directly to the recipient and cannot be considered as a "money payment" within the meaning of the Social Security Act.

In contrast with assistance provided through other methods (for example, congregate care; the provision of groceries or other goods and services; vouchers earmarked for specific items and payable to specific vendors; payments to vendors and cash payments, the expenditure of which is supervised), the money payment provides the recipient with a sum of money to be spent as he, not the agency determines will best meet his need. This sum of money is not identified with any particular requirement or requirements considered in arriving at the amount of the payment; nor is it for any specific items or purposes.

Money payments are supported in the administration of public assistance by the provision of services to the applicant and recipient designed to extend his field of choice by enabling him to make effective use of the resources available to him, including the public and private educational, health, employment, religious, recreational, and other facilities of the community. While the agency is responsible for making known to all recipients the availability of such resources, the decision as to the extent to which he wished to use the services of the agency is the recipient's. In making services available to persons who are infirm, bedridden, or otherwise incapacitated, the agency staff may need to perform services that would be inappropriate if performed to help well persons secure the goods and services which they regularly need. If the recipient's money is spent in accordance with his choices and desires, no question arises about violation of the money payment provision. If the recipient is too ill to make decisions for himself and does not have relatives or friends or a guardian to act for him, the agency should be prepared to do so. If

it is necessary for the agency to continue to act for him, the question arises as to whether the money payment best meets his needs.

5130. *Requirements*

5132. *Federal Financial Participation*

Payments must be accomplished without direction on the check or by letter or by agreement as a condition of receiving the payment, or by other notification, that the recipient must use his money in a specified way or for a specified purpose.

EXHIBIT G

Report On
The Department of
Public Welfare

State of Maryland

Commission on
Governmental Efficiency and Economy, Inc.

Baltimore

May 1948

Foreword

Maryland's present public welfare program really began in 1900 when an Act of the Maryland General Assembly (State Legislature) established a Board of State Aid and Charities. That Board was charged with the responsibility of investigating the condition and reporting to the Legislature the needs of all public and State-aided institutions and agencies. It also was empowered to administer and supervise the distribution of all moneys and commodities which might be made available to or by the State for relief of the distressed during involuntary unemployment, epidemics or other emergencies.

During the depression of the thirties when the Federal Government began to share in the cost of public assistance, Maryland, in order to participate in these Federal grants, amended its legislation to conform to the developing Federal program and the Board of State Aid and Charities became the central over-all administering agency for the State of Maryland and its twenty-four local governments.

In 1939 the State Legislature abolished the Board of State Aid and Charities and created the present State Department of Public Welfare with broader powers as the central coordinating, directing and supervising agency of all welfare activities in Maryland, including those of the twenty-three counties and Baltimore City, financed in whole or in part by State or Federal Government.

The present activities of the State Department of Public Welfare may be grouped in the following major classifications:

1) General supervision of the Public Assistance program and children's foster care and protective services;

2) Licensing and inspection of child care and child placement agencies and institutions and licensing of boarding homes;

3) General supervision of the State training schools (Montrose, Maryland Training School for Boys, Maryland Training School for Colored Girls, Cheltenham);

4) General supervision of the program of State aid to hospitals, institutions and agencies.

The administrative powers of the Department are autonomous only in the case of those services not embraced by the Federal Social Security Act. In the Federally-aided public assistance services, Maryland's policies and procedures must be cleared with the Federal Security Agency as part of a Federally-approved State plan. These Federally-aided services are Old Age Assistance, Aid to Dependent Children, Public Assistance for the Needy Blind.

The Federal requirements, which relate to a number of specific items and which are included in the Maryland law and the State Department of Public Welfare regulations, may be classified as:

1) Conditions which must be met by State agencies;

2) Interpretations issued as criteria in determining whether a state meets the requirements of the Federal statutes;

3) Procedures and reports which must be submitted by states.

In the case of General Public Assistance, the fourth public assistance category, the State Department's powers are autonomous since no Federal aid is received nor is the category included in the Federal Social Security Act.

Child welfare services, however, are included in the Federal Act, but the Federal Government contributes only a small lump sum towards administrative costs and exacts no requirements as to the nature or scope of the State's child welfare program.

It is with the foregoing five services that this study of public welfare at the State level was requested to deal.

Nature and Scope of Study

The study was made by the Commission on Government Efficiency and Economy, Inc., at the request of the Governor and the General Assembly of Maryland. It was financed wholly by the Commission, none of whose funds are received from any level of government. It was directed by D. Benton Biser, who utilized key members of the staff which he directed in the Commission's study of the Baltimore City Department of Welfare reported in December 1947.

For defining the scope of its study, the Commission has interpreted welfare at the State level as meaning the State Department of Public Welfare and the manner in which it discharges its responsibility to plan and regulate the op-

eration of Maryland's welfare program uniformly throughout the State. Thus defined, the scope of this study excludes investigation of the detailed operations of the local welfare agencies beyond the uniform application of the State Department's rules and regulations for carrying out the Maryland program.

The methods of study employed were initially the historical and documentary, followed by uncontrolled observation and finally by controlled interview and observation.

The study included examination of the execution of duties specifically assigned by law to the Department, as well as the scope and observable effects of its use of discretionary policy-making powers in relation to its duties.

Practice regarding each element which accepted theory deems essential to effective administration was examined, and there also were investigated such aspects as the equilibrium of organization, the role of authority and administrative behaviour. The facilities needed and provided received attention. Policy and practice were weighed against statistical data and the evidence collected by observations covering each phase of the operation and its management.

Each of the local welfare agencies in the twenty-three counties was visited in order to examine the State Department's relationship to and its effect upon critical points in the program's local administration and operating results.

In this local phase of the study alone, some hundred items were investigated most of which involved the checking of several details of practice. An average of approximately ten per cent of case records and related data were sample strictly at random and reviewed for their relation to these items.

In addition to observations and data collected during the study, members of the press, business men, county and State officials and other representative citizens were interviewed in all areas of the State regarding local judgment of the program and its results. Almost all of the

local agencies expressed disappointment that the study was not to be extended to the county level, and several expressed a desire for a complete investigation.

Th purpose of this report is to answer as briefly as possible the immediate questions of the Governor, the General Assembly, the Department and of the public at large concerning Maryland's welfare program.

In view of the conditions found, it has not been deemed necessary to expend the time or money required to reproduce statistical and other supporting data collected by the study staff or to repeat historical, descriptive and background text, much of which is already known to the officials involved or is available to the public in the usual reports and information bulletins from official sources. There also has been omitted from this report material assembled during the study, but regarding which no comment or important criticism seems necessary.

The excellent cooperation received by the study staff from the State Department and the local county agencies is acknowledged, as also is the helpful assistance extended by other departments, officials and citizens consulted throughout the State.

The General Situation

Maryland's public welfare program as planned, directed and supervised by the State Department and as operated generally by the county agencies is being conducted efficiently and economically in the best interest of Maryland citizens, within the limits of the funds available.

Intensive study of the activities of the State Department of Public Welfare, together with an examination of the Department's relationship to and effect upon the administration and operation of the twenty-three local county welfare agencies, has disclosed little of a nature serious enough to justify criticism.

It was apparent that this situation was not of recent origin, but existed before the welfare surveys were begun.

The great weight of opinion throughout the State was found to regard the program as being rather conservative and that it should be so; and that its present scope was broad enough.

The program was being uniformly administered in accordance with the Maryland laws which govern it, and the operations of the local agencies themselves reflected such uniformity to a high degree.

Inquiry throughout the State, in both governmental and non-governmental quarters, developed that the State Department and the county agencies were well regarded, the relationship of the welfare agencies with other governmental agencies was considered to be satisfactory, the administration and operation of the program free from political interference. No evidence was found to refute those opinions.

There were no important problems common to all localities, either recognized as such by them or found to be in existence by the study. Difficulties that had occasionally arisen seemed to have been due not to any local non-conformance to the program nor to the hostility of the community or county governments, but to administrative weaknesses since corrected.

Cost of Maryland Program. During the early part of the past decade the trend in cost and number of cases was downward, but the latter part of the decade has shown increases, the cost trend rising more sharply than the number of cases. Analyses by the Federal Security Agency, however, show that the total costs of Maryland's program as well as the per capita cost, the amount of grant and the number of cases are generally below the average of other states.

State Appropriations. The State cannot lose sight of the fact that having established the purpose and scope of the program by law, it is equally essential to appropriate the funds required to carry out the objectives of the law effectively. If experience shows the cost to be higher than the State and its local sub-divisions wish to support, then the scope of the program should be narrowed.

In this jointly financed program, the actual use of State appropriations is, of course, subject to the amount of and time that the proportionate share of local funds is made available. Since the levy dates of the local governments do not all correspond with the State's fiscal period, it is reasonable that the State should provide adequate appropriations to match promptly the amount of local funds which it estimates will be provided as required.

Federal Contributions. The State is losing some Federal participation because of the requirement of United States citizenship for Old Age Assistance eligibility. As a result, many such needy cases must be placed in the General Public Assistance category to which the Federal Government make no contribution of funds, this category being financed equally by the State and local governments.

Local Cost Burden. Local authorities in a few of the counties complained that the present program was too expensive for them to carry, although no factual evidence could be found to support this. The local cost burden of the welfare program, however, does weigh more heavily upon some counties than upon others, and this difference in some cases is not necessarily directly related to the number and kind of cases, but has to do also with such factors as taxable resources, etc.

Some states, recognizing that they are more favorably situated to raise revenue than are their local governments, are assuming a greater share of the welfare costs than Maryland does. They thus theoretically distribute that cost more equitably within the state on the basis of ability to pay.

It is sound policy, however, for the Maryland local governments to have a real stake in the welfare program by continuing to bear a substantial share of the cost burden. This involves a problem of equalization which cannot be dealt with satisfactorily until the State's uniform fiscal procedures and reporting measures have been in effect long enough to make available reliable data regarding the resources and capacities of the local governments to partici-

pate in State and locally financed programs such as public welfare.

Regulation of the Program

The several Maryland laws are considered to be broad enough to allow all the flexibility that the Department of Public Welfare should be permitted to have to administer the program for which those laws provide. The various laws dealing with the different categories well might be consolidated into one law, thus saving repetition and possible confusion due to lack of uniformity in phraseology.

The Department has presented to the Legislative Council recommendations regarding other specific administrative clarifications in provisions of the existing laws.

Rule Making. In discharging the responsibility given it under the law for developing the State program, the Department appears to have exercised reasonable discretion in the rules and regulations it has established.

The Maryland welfare program or plan, as defined in specific Acts of the General Assembly and by policies and rules which are approved by the State Board of Public Welfare, is set forth in the State Manual.

The Manual describing the State plan is undergoing desirable improvement and simplification. Interpretative material and suggestions, which the Manual contains in addition to the mandatory rules and regulations, are specifically approved by the State Board of Public Welfare only in special cases. It is suggested that all Manual material be approved by the Board and that the distinction between mandatory and non-mandatory material be better emphasized.

Local Participation. Manual material is developed within the Department, but important policies and requirements are discussed with local agencies before final adoption. There is also an advisory committee of local board chairmen which meets annually with the State Board for consideration of the program. It has been the practice of the Department also to invite the chairmen of local boards to

meet annually for the discussion of some State-wide problem prior to the Department's formulation of its policy.

Much of the regulatory and interpretative material developed by the Department, however, reaches the local agencies with little real opportunity having been given local authorities to participate in its preparation and adoption.

The program now has reached a stage of development and general acceptance where a natural and almost inevitable tendency towards autocratic action should be guarded against by avoiding too much rule-making, by continuing carefully to test proposed policies in advance, and by assuring ample opportunity for local governments to participate responsibly in the initiation and formulation of program policy.

More consultation with private agencies as well as a sampling of representative public opinion in advance of policy formulation also should be helpful.

Philosophies. Several of the local governments were finding it difficult to accept the principle of State standardization of grants even with adjustment of those standards for different areas of the State.

This reluctance apparently stemmed from the interpretation by a number of local board members, county officials and citizens that the program should not be one having as a part of its purpose the lifting by money alone of the standard of living of the people receiving public assistance. The opinion was general that living on public assistance cannot be a satisfactory way of life and should not be made as attractive or profitable as earning a living.

The Department's approach to the objective of its service recognizes public assistance as only a temporary arrangement for the recipient while some permanent plan for self-support is being worked out by him with the assistance of the welfare agency. Towards fully accomplishing such objective, the need is recognized for continual improvement in developing a plan which will get the social worker onto the case immediately to help the recipient wherever

possible to make use of some solution other than public assistance; or to continue working on the case to see that a solution is found as soon as possible.

The Department regards these as criteria for measuring the degree of efficiency in accomplishing the objective of the service. But it is not satisfied that it has the answer to this problem in all parts of its present procedure. For example, during recent months it has been critically testing its methods in dealing with Aid to Dependent Children cases in the belief that present methods do not offer enough stimulation to the recipient to improve her circumstances.

Federal Relationships. The Department is careful to keep up to date in conforming the Maryland plan to Federal requirements. It clears with the Federal administration matters which involve Federal matching of funds.

The Department, pending its own thorough-going consideration and practical testing, does not accept all the interpretations which the Federal administration promulgates and the theories and philosophies it advance through its "state letters," conferences and the distribution of pamphlets and other material.

There is no evidence that undue pressure is exerted by the Federal administration to obtain acceptance by the State of philosophies or practices which go beyond specific requirements.

It should be noted particularly, that the study staff's understanding of the Federal-State-local relationship had been clarified since the report on the Baltimore City Department of Welfare. This present study has made it clear that the City Department was accepting philosophies and theories beyond the scope and philosophy of the official Maryland State welfare plan.

The State Department

Structure. The organization structure of the Department is simple and on a line and staff basis heading up to the Director. Administration is classified according to func-

tional sub-divisions, the relationships of which are clearly placed with no duplication or overlapping. The lines of command are distinct and the points of responsibility clearly placed and observed in practice. There is no conflict between policy-making, directing, supervising and operating. No basic change in the structure of the Department is necessary.

No evidence was found that the Department now desires to expand beyond its present scope or to give to the public welfare program an importance out of proportion to its place among all public functions.

No tendency is manifested in the Department towards taking over activities that belong to other departments of government. For example, neither the State Department nor the county agencies indicate any desire to overlap or become too involved in the new medical care program placed by law under the supervision of the Health Department. They have set up no units to deal with promiscuous girls, nor entered the recreational field in administering summer camps for children.

State Board of Public Welfare. The Board of Public Welfare, which by law is the policy-making authority of the Department, is working well in practice. The fact that the law prescribes no qualifications for its members has not been a handicap and, moreover, it places upon the Governor heavier responsibility for the character of his appointments. In these, care has been taken to represent various important interests in the welfare field as well as the public at large.

In addition to certain specific duties imposed by the law, the Board is kept informed by the Director of important administrative matters. This serves in good purpose of keeping the Board in relatively close contact with the program and functions of the Department. The results being accomplished suggest no changes.

Executives. The uniformly good results being achieved are evidence that the Department executives apply principles of sound management and operating practice. Deci-

sions are reached objectively and converted into prompt and effective action. The Director and Assistant to the Director overlook none of the elements which are recognized as essential by accepted theory and practice of administration.

Administrative responsibility is not shifted to the staff, which is held responsible for process.

Accepting real responsibility and full accountability to the public and taxpayers for the public welfare program, the executives of the Department adopt an objective attitude towards the selection and testing of procedures and methods to accomplish the purposes of the program and for its improvement.

The staff is required to conform to State regulations regardless of personal attitude. Staff meetings are held to deal with new material or special problems, but no time appeared to be wasted on unguided discussion of doubtful purpose or result.

Unannounced routine visits to all local agencies should be made by the Director or the Assistant. Such visits should disclose matters of over-all operating management in which improvement can be made, as this study brought to the notice of the survey staff. They would serve also as practical tests of those phases of supervision by the Department's field supervisors.

Staff. The staff is well-balanced, adequate in size and specialization, capable and busy. It is mature intellectually, and emotionally stable.

Salaries. Salaries are not commensurate with job specifications or with responsibilities carried by either executive or professional staff positions. Adjustment is needed within the Department as well as standardization with other department of the State Government. As to clerical stenographic and accounting salaries, it is understood that the State Government is in the process of adjusting these on an equitable basis with other departments.

Field Supervision. Field supervision, by which the Department keeps in touch with the local agencies for control

and guidance of a uniform program, on the whole is good. It is persistent, but care is taken, however, to avoid making decisions or assuming responsibility rightly belonging to the local agencies.

In this regard there is a tendency by the supervisors to employ a process described by social workers as "working with" a person around a problem until the person worked with senses the problem in its full significance and his own responsibility to take corrective action on his own initiative.

This kind of process in dealing with experienced local directors is out of place at the level of State supervision. More direct methods should be employed by the field supervisors dealing with the executives of the local agencies and more direct methods should be employed, especially where correction is needed or where confusion exists as to the purpose and interpretation of a State regulation.

Supervisors should take the lead in their discussions with the agency directors, and not expect the directors to set the pace of the discussion or decide what subjects are to be dealt with.

In some county agencies, field supervision had failed to cover adequately such aspects of management as efficient office arrangement and neatness and the organization of records and files.

The supervisors appear to spend much time in writing up their field notes. Reporting on the whole is good, but the notes could be better organized to facilitate their review by adhering to a uniform schedule of topics. Such a schedule is in existence, but does not cover all items which the supervisors actually deal with in practice, and rightly so, to effectuate the State plan. All these items should be covered on each visit. Such a schedule completed in brief form would be a running record of the history of the agency's operating progress and the supervisor's appraisal of results being obtained. It thus would provide in ready summarized form supporting data for the annual evaluation of the agency.

Each of the field supervisors (except one) is assigned counties which are in widely separated sections of the State. This is done in an effort to give each field supervisor counties representative not only as to section of the State, but also as to size, organization, etc.

While such assignments have been made on the basis of time, travel and cost studies, it is suggested that the program might be better served by districting the State and assigning to each field supervisor a compact territory, rotating the supervisors from time to time among the districts. This plan should enable field superviors to spend more time in local agencies and to have direct experience with all the agencies and the problems of all sections of the State.

Financial Services. The financial policies and procedures are controlled and carried out efficiently. Safeguards provided are adequate.

The forms in effect are well designed and simple. Although the number and kind are controlled largely by Federal requirements, they serve useful purpose and are necessary.

The work of the field auditors in the county agencies could be lessened were it not for requirements of the Federal administration. The one audit a year now made of local agencies is adequate in view of the findings of past audits. Field auditors should be careful to correct errors on the spot and fully to instruct the local financial clerks in proper and efficient procedure.

Statistics. Statistical work is efficient. Routine forms and analyses now in use are necessary. Further statistical development is planned for useful administrative purposes on such subjects as eligibility, standardization, overpayments and frauds, appeals, housing needs, need for special care for the handicapped, etc.

Physical Facilities. The Department is very well housed, but its quarters are rented on short-term lease. Furniture and equipment are adequate and in good condition. Motor

transportation facilities are inadequately provided by the State, with the result that the members of the staff are obliged to use their own cars, subject to the mileage reimbursement which the State allows.

Relationship with Other State Departments. Related to the public welfare program are certain functions of other State departments such as those of the Comptroller, Treasurer, Auditor, Budget and Procurement, Employment and Health. The relationships are on a cooperative and responsible basis.

Public Relations. More informational material beyond the Manual and bulletins which are for Department and agency use is needed to keep the general public fully informed regarding the program, how it operates what its problems are, how these problems are approached for solution.

Standardization and Grants

Standardization. In line with the goal of the Federal administration that all recipients be treated uniformly, the State Department has established standards for the items which may be included in a grant, with provision for adjustments according to locality, size of family, age, etc.

On the whole the Department appears to have weighed carefully the differences existing in areas of the State and to have made use of proper data responsibly in developing the standards adopted. Attention now is being given them towards revision where necessary. A part of this problem is to keep the public assistance grant from exceeding the earnings available to a comparable family which is self-supporting.

Standardization has provided a basis of accountability for the grant and its amount. It has eliminated the determination of a public assistance grant on the basis of individual judgment. Most local agencies and officials stated that standardization has eliminated many inequities and enabled the local agencies to deal more effectively with community pressure for special treatment for certain cases.

Grants. The individual grant is determined by deducting every resource available to the applicant or recipient from the case budget as calculated according to the standards which apply to the needs of the case. In some cases the public assistance grant may be less than five dollars a month, but by this method all persons who are recipients of any amount of public assistance are on the same standards.

When postwar conditions brought about an increase in the number of new cases, the State, in order not to withhold assistance from eligible applicants, withdrew from the case grants all but four essential items (food, shelter, clothing and household maintenance), and placed a ceiling on the total grant allowable. This released enough funds to absorb incoming cases without creating a waiting list or creating a deficit. This policy is sound and practical in that it does not withold assistance from anyone who can satisfy eligibility requirements strictly applied.

Ceilings are now being re-examined in the light of experience and present conditions.

Consideration of the allowances for the various items included in a public assistance grant does not indicate that it affords more than minimum subsistence. The grant allowed has not been adjusted closely to the cost of living, and moreover there are excluded at present items which are part of the customary expenditures of persons of even the lowest income group. Nevertheless, in some areas of the State the maximum grant allowable, even on the present basis, was deemed by the local authorities to be excessive for the recipient's normal pattern of living.

The belief is widespread among county boards, and there is some evidence tending to confirm it, that meagerness of grant is serving successfully as an incentive for recipients' regaining self-support. It is felt that the recipient, once on the welfare roll, has a tendency to relax and develop the attitude that the government owes him a living, and that, furthermore, too many of the recipients fail to appreciate what they are able to obtain with so little effort.

To combat such tendencies, the belief was held that for the good of Maryland as well as of the recipients, public assistance should not pamper or indulge the recipient; the aim should be to help them regain responsible control of their affairs.

Analysis of standards and items of the grant, as well as the average grants being paid, does not indicate that Maryland's public assistance program is too liberal.

Prevalent practice of the Department and county agencies regards the relief grant (except to the permanently incapacitated) as temporary assistance to tide the recipient over a difficult period and to give him opportunity to make plans to regain his own means of support and normal pattern of life.

Appeals from grants or from denials of grants are few in number.

Employability. Public assistance is not available for employable persons whose need arises only from unemployment, nor for persons who have resided in the State for less than one year. Under the present regulations a fully employable worker whose wages may be insufficient to maintain a large family at the minimum living standard is not eligible for public assistance. Nor is public assistance available to supplement Unemployment Compensation.

The practice of granting or denying assistance to people who can do only so-called light work, when such light work is not available, is not uniform throughout the State. The whole problem involved in the medical determination of unemployability or degree of employability is not now dealt with to the complete satisfaction of the Department or of the local governments.

The Department is giving attention to this weakness in the procedure for determining eligibility which grows out of the medical certification obtained by the applicant to prove his unemployability, and in the meantime is tightening its scrutiny of the use of such procedure.

Legal Aids. Problems in these fields so far have been without apparent practical solutions. More effective co-

operation between the local welfare agencies and the courts, probation departments and State's Attorneys is desirable in cases such as desertion, non-support, bastardy and the occasional overpayments, which as a rule, however, involve very small sums. Even when prosecuted, permanent solution seldom is effected, although the cases perhaps have some deterring effect upon would-be offenders, provided sufficient publicity is given them.

Study is being given such problems associated with Aid to Dependent Children cases and the State Department, moreover, is working out a procedure which may aid cooperative action with the other departments involved.

County agencies have available their own legal advisers under arrangements which are made by the individual counties and are not uniform throughout the State. It is suggested that the State Department give consideration to establishing a new position in the State Department for a staff member whose time would be spent in the field examining for the local agency problems relating to resources, legal aspects of the eligibility procedure, recoveries, etc.

EXHIBIT H

(To Be Prepared In Six Copies)

Department of Health,
Education, and Welfare
Social Security Administration
Form PA-553
Rev. 1/52

Form approved
Budget Bureau No. 72-R440.1

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: III — Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: Nov. 5, 1958

3. Submittal No. 48

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....

6. Title: Director

Identification Of Material And Program Affected	*Outline Reference*	*Effective Date*	*Material Superseded*	*Disposition*	
7	8	9	10	[1] 11	12
1. Release #232	—	—	—	O	
2. II — Rule 200 — Pages 20 & 20b (ABCD)	IV	See Memo.	See Memo.	A	
3. IV — 101.13-101.14 (ABCD)	I	"	"	A	
4. V — Forms 302-City	V	"	"	A	
302A-City				A	
A. 355				A	
B. (ABCD)				A	

13. To: Mr. Thomas J. S. Waxter, Director. 14. Date: February 16, 1959.

15. The above materials were received in the regional office on November 6, 1958.

16. Items A and AL accepted for incorporation February 16, 1959. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.

(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.

(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
   Regional Office: III — Charlottesville, Va.
   Attention: Public Assistance Representative
2. Date: June 9, 1961
3. Submittal No. 87
4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....
6. Title: Director

Identification Of Material And Program Affected	*Outline Reference*	*Effective Date*	*Material Superseded*	*Disposition*	
7	8	9	10	[1] 11	12
1. Release Memo. #261	—	—	—	O	
2. II — Rule 200 ps. 6, 20, 24, 26 Rule 400 — ps. 1-14(c)	IV	See R. #261	See R. #261	See NL	Deleted, 87a Held in RO
3. II — Sections 313.4; sub-div. 541; V — Forms 537 #850, 871 & H-1	O	"	"	O	
4. III — Rule 100 ps. 1-2c (ABCDM)	V	"	"	AL	
5. IV — 15 pages (See R. #261) (ABCDM)	I	"	"	A	
6. V — 300 Titles Forms 207 & 210 P.A. (ABCDM)	IV	"	"	A	
7. V — Forms 250, 252, 253, 254, 258 (ABCDM)	VI	"	"	A	
8. Form NCS 26, Pamphlet and other procedures for Baltimore City MAA	II	6-1-61	None	AL	

13. To: Mr. Thomas J. S. Waxter, Director.
14. Date: August 15, 1961.
15. The above materials were received in the regional office on June 15, 1961.
16. Items A and AL accepted for incorporation August 25, 1961. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.
(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
(O) Has been filed as other than plan material.
(NL) Is under consideration and notice of action will be sent later.

R.O. SUPPLEMENT
SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: III — Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: June 9, 1961
3. Submittal No. 87

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: _____
6. Title: Director

Identification Of Material And Program Affected	*Outline Reference*	*Effective Date*	*Material Superseded*	*Disposition*	
7	8	9	10	[1] 11	12
2. Rule 400 — ps. 1-14(c)	IV	See R. #261	See R. #261	NL except ps. 5, 13, 14 sup. w/o inc. by #88; p. 7 sup. w/o inc. by #89; p. 9 sup. w/o inc. by #92.	

13. To: Mr. Thomas J. S. Waxter, Director. 14. Date: November 9, 1961.
15. The above materials were received in the regional office on June 15, 1961.
16. Items A and AL accepted for incorporation: Date: _____ George Narensky.

[1] The symbols inserted indicate that the item:
(A) Has been accepted for incorporation into the State's approved plan.
(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
(O) Has been filed as other than plan material.
(NL) Is under consideration and notice of action will be sent later.

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: III — Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: June 9, 1961

3. Submittal No. 87a

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....

6. Title: Director

Identification Of Material And Program Affected	*Outline Reference*	*Effective Date*	*Material Superseded*	*Disposition*	
7	8	9	10	[1] 11	12
1. a. II — Rule 200, pp. 6, 20, 24, 26(c)	IV	7/1/61	Identical pages Already in Manual	A	
b. II — Rule 200, p. 26(c)				Superseded without incorporation by Sub. #91	

13. To: Mr. Thomas J. S. Waxter, Director. Date: February 2, 1962.

15. The above materials were received in the regional office on June 15, 1961.

16. Items A and AL accepted for incorporation 1/22/62. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.

(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.

(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: III — Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: June 9, 1961

3. Submittal No. 87

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....

6. Title: Director

Identification Of Material And Program Affected	*Outline Reference*	*Effective Date*	*Material Superseded*	*Disposition*	
7	8	9	10	[1] 11	12
2. Rule 400 — ps. 1-14(c)	IV	See R. #261	See R. #261	A except ps. 5, 13, 14 sup. w/o inc. by #88; p. 7 supp. w/o inc. by #89; p. 9 sup. w/o inc. by #92	

13. To: Mr. Thomas J. S. Waxter, Director. 14. Date: March 12, 1962.

15. The above materials were received in the regional office on June 15, 1961.

16. Items A and AL accepted for incorporation 2/9/62. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.

(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.

(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: III — Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: July 30, 1962

3. Submittal No. 104

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....

6. Title: Director

Identification Of Material And Program Affected	*Outline Reference*	*Effective Date*	*Material Superseded*	*Disposition*	
7	8	9	10	[1] 11	12
1. Release Memo. #275 (7/62) Supplement to Release #275 (7/62)				O	
2. I — Sub-divs. 401, 403 & 404 V — Forms 321 & 387 (ABCD)	II	See R. Memo.	See Release Memo.	A	
3. II — Rule 200, ps. 20, 31, 31a, 31i, 31i; Sec. 226; V—Form 226 (ABCD)	IV	"	"	A	
4. II — Sec. 306.1; V — Form 213 (MAA)	IV	"	"	A	
5. II — Rule 400, P. 14 V — Form 218 (C)	IV	"	"	A	
6. III — Sec. 104.31; V — Forms 131, 206 COR., 207, 207 COR. (ABCDM)	V	"	"	A	
7. V — Forms 257, 257—Instructions (ABCDM)	VI	"	"	A	

13 To: Mr. J. S. Waxter, Director. 14. Date: September 17, 1962.

15. The above materials were received in the regional office on August 2, 1962.

16. Items A and AL accepted for incorporation 9/17/62. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.

(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.

(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: Sept. 17, 1963

3. Submittal No. 126

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....

6. Title: Director

Identification Of Material And Program Affected	*Outline Reference*	*Effective Date*	*Material Superseded*	*Disposition*	
7	8	9	10	[1] 11	12
2. a. II — Rule 200 — VII (pages 20, 20a); XI (pages 24, 25, 25a).				A	
b. II — Rule 200 XIV — Community Work and Training Projects (pages 25a, 25b and 26).				NL	
c. II — Rule 200, XIV — Insufficient Funds (pages 26 and 26a). Supersedes Submittal 91, dated September 1, 1961, Item 1, Rule 200, pages 26 and 26a.				NL in RO	
d. II — Rule 200 — Page 31a and 31f.				A	
e. Subsection 202.1 — 202.6; 215.3—215.5.				A	
f. Subsection 218.1 — 218.8; Form SDPW-275, Community Work and Training.				NL	

13. To: Mr. Raleigh C. Hobson, Director. 14. Date: September 24, 1963.

15. The above materials were received in the regional office on September 19, 1963.

16. Items A and AL accepted for incorporation 9/24/63. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.

(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.

(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
   Regional Office: Charlottesville, Va.
   Attention: Public Assistance Representative
2. Date: Sept. 17, 1963
3. Submittal No. 126
4. From: Maryland State Dept. of Public Welfare

   Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....
6. Title: Director

Identification Of Material And Program Affected	*Outline Reference*	*Effective Date*	*Material Superseded*	*Disposition*	
7	8	9	10	[1] 11	12
1. Release #288, August 1963.	—	—	—	O	
2. II — Rule 200, Pages 20-26; 31e; Subdivision 202; Sections 215.3 — 215.4; Subdivision 218; V — Form 275 (ABCD).	IV	See Release Memo.	See Release Memo.	see the attached page for disposition of item 2	
3. II — Section 413.2 (C)	II	"	"	A	
4. III — 205.1-206.2; V — Forms 214, 216, 216C, 216M (ABCDM).	VI	"	"	A	
5. Page 1 of V — 400 — Titles.	II	"	"	A	

13. To: Mr. Raleigh C. Hobson, Director. 14. Date: September 24, 1963.
15. The above materials were received in the regional office on September 19, 1963.
16. Items A and AL accepted for incorporation 9/19/63. George Narensky.

[1] The symbols inserted indicate that the item:
- (A) Has been accepted for incorporation into the State's approved plan.
- (AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
- (O) Has been filed as other than plan material.
- (NL) Is under consideration and notice of action will be sent later.

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
   Regional Office: Charlottesville, Va.
   Attention: Public Assistance Representative
2. Date: Sept. 17, 1963
3. Submittal No. 126
4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....
6. Title: Director

Identification Of Material And Program Affected	*Outline Reference*	*Effective Date*	*Material Superseded*	*Disposition*	
7	8	9	10	[1] 11	12
2. b. II — Rule 200 XIV — Community Work and Training Projects (pages 25a, 25b and 26).				A	
f. Subsection 218.1-218.8; Form SDPW-275, Community Work and Training.				A	

13. To: Mr. Raleigh C. Hobson, Director. 14. Date: November 15, 1963.
15. The above materials were received in the regional office on September 19, 1963.
16. Items A and AL accepted for incorporation 10/7/63. George Narensky.

[1] The symbols inserted indicate that the item:
- (A) Has been accepted for incorporation into the State's approved plan.
- (AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
- (O) Has been filed as other than plan material.
- (NL) Is under consideration and notice of action will be sent later.

R.O. SUPPLEMENT
SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
   Regional Office: Charlottesville, Va.
   Attention: Public Assistance Representative
2. Date: Sept. 17, 1963
3. Submittal No. 126
4. From: Maryland State Dept. of Public Welfare
   Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:
5. Signature: .....
6. Title: Director

Identification Of Material And Program Affected	*Outline Reference*	*Effective Date*	*Material Superseded*	*Disposition*	
7	8	9	10	[1] 11	12
2. c. II — Rule 200 — XIV, Insufficient Funds (pages 26 and 26a).	IV	See Release Memo. #288	Rule 200, pages 26 and 26a (Submittal No. 91 dated Sept. 1, 1961, item 1).	AL	

13. To: Mr. Raleigh C. Hobson, Director. 14. Date: July 15, 1964.
15. The above materials were received in the regional office on September 19, 1963.
16. Items A and AL accepted for incorporation 7/15/64. George Narensky.

[1] The symbols inserted indicate that the item:
- (A) Has been accepted for incorporation into the State's approved plan.
- (AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
- (O) Has been filed as other than plan material.
- (NL) Is under consideration and notice of action will be sent later.

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
   Regional Office: Charlottesville, Va.
   Attention: Public Assistance Representative
2. Date: Jan. 15, 1964
3. Submittal No. 133
4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....
6. Title: Director

Identification Of Material And Program Affected	*Outline Reference*	*Effective Date*	*Material Superseded*	*Disposition*	
7	8	9	10	[1] 11	12
1. Release Memo. #291: a) Instructions. b) Effective Dates & Comments.	—	—	—	O	
2. II — Rule 200 — P. 20a, Sec. 210.3, 210.5-210.6; 219.7; V — 310 — Instructions (D).	IV	See Release Memo. #291	See Release Memo. #291	AL	
3. II — Rule 200 — Pgs. 31e and 31f; Sec. 219.3 (ABD).	IV	"	"	AL	
4. II — Sec. 219.4 (ABCD).	IV	"	"	AL	
5. V — Forms 310, 250 and 250S (ABCD).	VI	"	"	AL	
6. Administrative Cost — Medical Care (ABCDM).	V			O	(no outline reference)

13. To: Mr. Raleigh C. Hobson, Director.
14. Date: February 28, 1964.
15. The above materials were received in the regional office on January 23, 1964.
16. Items A and AL accepted for incorporation 2/28/64. George Narensky.

[1] The symbols inserted indicate that the item:
- (A) Has been accepted for incorporation into the State's approved plan.
- (AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
- (O) Has been filed as other than plan material.
- (NL) Is under consideration and notice of action will be sent later.

EXHIBIT I

State of Maryland, City of Baltimore, ss.

I, Maxie P. Howlett, being duly sworn, states the following:

I have been an employee of the State Department of Social Services and its predecessor agencies since 1942. In 1947, I began service as Supervisor of Plans and Standards for the Department, in which capacity I had the responsibility for formulating policy statements in connection with the AFDC Program. Since March 1965, I have served as Assistant State Director of the Department of Social Services for Family and Child Welfare Services.

It is my recollection that a maximum grant regulation has been in effect in Maryland since approximately the time of inception of state-wide need standards in 1944. It is also my recollection that these maximum grant regulations consistently have received Federal approval, I also recall that one factor giving rise to these regulations was the strong feeling on the part of many county boards, particularly during the period following adoption of statewide need standards in 1944 that public assistance payments should not exceed the earnings of the head of a family when off assistance and that the income of a public assistance recipient should not exceed that of his employed neighbors.

I recall that at various times during the early years following the introduction of the maximum grant regulation, the State Department of Public Welfare secured information as to wage levels from the State Employment Service and that the information thus secured was utilized in establishing maximum grant levels.

Sworn to and subscribed to by me this 23rd day of December, 1968.

MAXIE P. HOWLETT,

Assistant State Director.

(Jurat.)

PROCEEDINGS IN OPEN COURT — JANUARY 3, 1969

* * * * * *

(T. 6) (Judge Winter) But you have the sworn testimony of a representative of the state that they wanted to repeal the regulation. The only reason why they did not repeal the legislation was because the Governor failed to put in his (T. 7) budget the money that would be necessary, and the Legislature, as a consequence, failed to appropriate it.

(Mr. Liebmann) Your Honor, that is perfectly true as to the present position of the Department. As a matter of policy, the Department wants to get rid of this regulation. But we are here concerned with a question of Federal constitutional law, which binds not only the present Director of the Department, but any past Director, any future Director, any present Legislature, any future Legislature.

I do not think the fact that the present Director of the Department, for reasons which I respect — indeed, for reasons with which I sympathize as a matter of my own views as to this particular question of policy involved — I do not think the fact that that is the present position of the state is in any sense in conflict with the fact that there are other grounds which gave rise to this regulation, which can be urged in support of it.

Now, this precedent, if it remains the law of this case, is going to be cited not only in this case, but in many others in 24 or 25 states throughout the country. This is a case of great importance.

I do not know whether this Court has had occasion in the past to familiarize itself in any detail with what has been described as the welfare rights movement, and the basic purposes of the welfare rights movement, some of which (T. 8) are constructive, some of which are, I might say, frankly, destructive.

I think the impact of this decision is going to be very, very profound. Because what this decision will say is that the states, in framing their welfare structures, have to completely disregard the impact of the welfare — of the

level of welfare payments on the labor market, on the wage structure. From that, the implications which flow are, I think, considerable.

They go really to the basic conflict in public policy that we have in this country that really is one of the most important areas of domestic political controversy, and that is really whether you should endeavor to relieve the conditions which exist by massive programs of public works and employment or whether you should have a system of guaranteed income.

This decision, if it is implemented, is going to cast considerable weight into the balance in favor of the second general approach to these problems.

* * * * * *

(T. 31) (Judge Winter) Well, I am suggesting or asking you, why isn't it totally irrational? In other words, if the basic theory is that the maximum grant is tied in to current wage levels, that by imposing a maximum grant we encourage the adult in the family to get a job and not sit back and languish on the welfare rolls? How can this chain of reasoning apply when it is the child who is eligible because the parent is physically or mentally incapable of working, is dead or is absent?

(Mr. Liebmann) Well, I think first with respect to the death — with respect to death or absence, I think you have the presupposition that the child is in the family, is in some other family group where someone has the obligation of support.

Now, there is this great concern—

(Judge Winter) Well, take your one plaintiff in this case. Take your plaintiffs in this case, Mr. and Mrs. Gary, whom you stipulated are physically incapable of working; Mrs. Williams whom you stipulated, her husband has left her. Now she is there with the children and by reason of her — as I recall it, her own bad health and the tender age of the youngest children, is incapable of working.

(Mr. Liebmann) Well, Your Honor — (Pausing).

(Judge Winter) Now, of course this is a class action. These are only two of the plaintiffs.

(T. 32) (Mr. Liebmann) That's correct, Your Honor.

(Judge Winter) But we know what makes a child fall within the definition of a dependent child.

(Mr. Liebmann) Well, the other plaintiffs are AFDCU, or the class is not limited to non-AFDCU. That is to say, the children of unemployed parents are, in Maryland, included in the class represented by this action.

But I think also that there undoubtedly is a feeling on the part of at least some legislators that even in the other categories there is some — perhaps some tendency to overstate the extent of disability. You have—

(Judge Winter) Well, even if we assume—

(Mr. Liebmann) You have — I am sure this Court has to wrestle with this all the time in Social Security cases.

(Judge Winter) Well, even if we accept the correctness of your argument up to that point, then after you get around the fact that if you take some of the Williams children or some of the Gary children and put them in the home of an eligible relative, you can see that they can receive benefits under the program.

(Mr. Liebmann) Well, Your Honor, this is a — first of all I am not sure — the Court has conducted its reasoning, of course, entirely on a premise that the seventh, eighth (T. 33) and ninth child receive nothing, and I am sure we realize that in practice the grant is to the head of the family.

(Judge Winter) But is there any question that it is to the benefit of himself and his dependents?

(Mr. Liebmann) Yes, if the total grant is less, it means that there is less for each dependent but it is, I think, not true to say that the seventh, eighth and ninth child, as such, are just not on the rolls.

(Judge Winter) Well now, why isn't it, when the state's schedule of need shows what should be granted for the

seventh, eighth and ninth child, and we know that it is not being granted? After all, it is the state which, under the Act, has the right to prescribe the schedule of need.

(Mr. Liebmann) Yes, Your Honor.

(T. 34) (Judge Winter) And it is the state which has determined that a husband and wife and "X" number of children are entitled to, or should receive a minimum of $250; and that each child thereafter, in descending order up to the tenth, should receive "X" dollars more.

(Mr. Liebmann) Well, I think, Your Honor, that the state, apart from the question of need, was entitled to consider other factors, one of which was the real difficulty of limiting abuse of a welfare program, when you had total payments that were significantly higher than the wage rate.

I think that the regulation is, in part, a concession to administrative imperfection.

I think that is true. I think the people who are advocates of this sort of regulation feel that the best guarantee that every able-bodied person, or potentially able-bodied person, or semi-able-bodied person, will work is the harsh element of need.

But, apart from that, that brings me, I think, Your Honor, to the second ground that we have urged in support of this regulation.

I think Mr. Matera would be ready to concede that this arose earlier in the case, although not much of a point was made of it by the state earlier.

I do not want to make much of a point of it here, if for no other reason than it is an area of controversy (T. 35) that is highly charged emotionally. And that is the argument that the failure to give aid to families, or additional aid to children in families over a certain size, was designed to assure that persons of limited resources did not have an incentive to bear children that persons of less limited resources do not have.

The average wage-earner, the average member of the so-called middle class, does not have his income increased at all — I admit that the increases in income here are very slight — by reason of additional children.

There was a feeling, I suppose, on the part of some people that that was a ground for this particular classification.

(Judge Winter) All right. Now, how is that going to work? I mean how logically can that apply in the case of a dependent child who is a dependent child because there is one deceased parent and the surviving parent is physically incapable of working?

(Mr. Liebmann) I think, Your Honor, again, the answer to that is really found — I am quite willing to admit that this piece of legislation, like many, if not most, pieces of legislation, can operate illogically.

Unfortunately, legislation is not an exercise, or always an exercise, in perfect logic. It is a product of a process of political compromise.

(T. 36) (Judge Winter) But the political compromise must operate under the provisions of the Constitution, which says you cannot be totally illogical, so far as the equal protection clause is concerned.

Now, I am just trying to figure out how there is any logic, under the equal protection clause, to sustain what you say ought to be sustained as valid.

(Mr. Liebmann) Your Honor, I have been trying to address myself to that question.

I would say that I think the burden I have to carry on the motion for reargument, with respect to what the Court has already said, is, perhaps, somewhat less than that. Because the Court's statement, I think, is quite sweeping.

There is no qualification with respect to the state's applying this sort of regulation to people in the AFDC youth category, for example. There is no qualification of that kind.

There is no qualification with respect to the right of a state to apply it to people who have had significant numbers of children and who are being assisted in that way. Again, I do not lay much stress on that second ground, simply because, as I have said, it is a bitterly divisive subjects, and while the courts must deal with bitterly divisive subjects, I think the major importance of this case is on the less benefit point.

(T. 37) I have seen it seriously urged by many of the protagonists of the so-called welfare rights movement, which is really, I think, perhaps more highly organized, at least at its center, than this Court may realize, that, really, these welfare rights cases are, in a sense, only the opening wedge. And that what we really want and need is a system of family allowances, a system in which the objection that a wage-earner's compensation does not vary with the number of chilren is obviated by providing it for them, as well as for everyone else.

I think the problem one has when one says that the state cannot impose flat limits related to the wage scale on the total welfare payments is, in the long run, that the state cannot use these sometimes very harsh market forces as a form of economic discipline. It is ultimately going to be driven either to very complex and cumbersome administrative methods, some of which, I think, are perhaps embodied in the 1967 admendments, of trying to make sure that people work and taking all of their welfare payments away if they do not; or it may even be driven to some even more direct form of coercion or compulsion of labor.

I think, when one tries to look at it in a broad perspective, these cases are just one dot along the chain, as it were.

When you go back to the last century and read what (T. 38) was written about welfare payments in the age of laissez-faire, you see this deep concern, lest any payment operate as a detraction from the incentive to work.

I think no one disputes that that is carried to ridiculous lengths. At least I simply have no quarrel with many,

if not most, of the measures that have been taken to alleviate that.

But I think the point is that they were political measures arising out of the sense of injustice on the part of the elected representatives of the people. And what we here have is really a basic ideological, if you will, conflict.

It is not a conflict which, under the standards that, at least until very recently, were felt to be applicable to the state's prerogatives with respect to social legislation, is a conflict to be resolved by the courts.

If there is any reasonable ground, it can be urged on behalf of a regulation generally.

Now, Your Honor has pointed to a few perhaps extreme cases that can result. I think, probably on the average, although I am not a social worker and do not know, the stipulated cases are extreme cases. I am certain Mr. Matera did not choose his weakest cases when he brought this suit.

But we have to consider whether the regulation in the totality and, if you will, the average of its applications is totally irrational, in light of these basic elements (T. 39) that can enter into the state policy.

I would say simply that it is not, in a society in which just about all other forms of compensation are not related — are not related — to the number of dependents a person has. The one exception to that rule in our society, I think, is the military, where there are allowances for dependents. I think that is a significant exception, because in the military the government has a coercive power over people who are there.

I do not think you could run a free labor market on the basis of differential compensation for people on the basis of the number of their dependents. I think you have to wind up with some system for the allocation or direction or compulsion of labor.

What is claimed here, in its ultimate gradations, is that the state cannot design its social welfare programs in such

a way as to minimize interference with the labor market, having regard to all the bureaucratic imperfections that exist in the administration of any program.

* * * * * *

(T. 49) (Judge Winter) He makes a reference to the 1950 United States Code and Congressional Service.

(Mr. Matera) Yes, which we have read. It is similar to other legislative history which we examined. These particular pieces of legislative history talk about this particular provision being aimed at: one, providing benefits to all eligible individuals; and, two, providing these benefits promptly.

The state wishes to put all the emphasis on the fact that they will be provided promptly, and to give the whole meaning of that provision to that particular purpose.

(Judge Winter) Now, do you have any portion of the report that you think states the legislative intent with the same clarity that you have just summarized it?

(Mr. Matera) Your Honor, we would provide that to the Court.

(T. 50) (Judge Winter) Well, of course, I know that you are probably going to file a memorandum.

(Mr. Matera) Yes.

(Judge Winter) So that the record is clear, we refused your request to continue this case to give you additional time to prepare, primarily, I think, because I was about to start a term of court in Richmond; and then Judge Thomsen and Judge Harvey both have some commitments thereafter, particularly Judge Harvey, who, in the not too distant future, expects to start a protracted trial in another city.

In connection with denying that request for a postponement, we said that we would permit you to file a memorandum after the argument today.

Perhaps it would be better if you kept your copies, or your quotations, and what have you, and attached them to

that memorandum, rather than look for them now, if you do not have them at your fingertips.

I would be very curious — but I have not yet examined them myself — as to what the congressional reports say was the purpose of the 1950 remedy, and if they say that it, in effect, had two purposes, with the same clarity as you have expressed it; in other words, whether they support your statement.

(T. 51) (Mr. Matera) Yes, sir.

Your Honor, that more or less concludes the argument concerning interpretation of 609(a)(9) — 602(a)(9).

* * * * * *

United States District Court for the District of Maryland

EXCERPTS FROM
EXHIBIT A[1] TO MEMORANDUM OF PLAINTIFFS IN OPPOSITION TO DEFENDANT'S MOTION

(U. S. Code Congressional Service, 81st Cong., 2d Sess. (1950), Pgs. 3471, 3507)

Page 3471:

Social Security Amendments

* * * * * *

a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished with reasonable promptness to all eligible individuals. This new requirement would take effect July 1, 1951.

The same addition has been made by sections 321 and 341 of the bill to sections 402 (a) and 1002 (a), respectively, of the Social Security Act, although in the latter case the new clause is numbered (11).

These amendments proposed by the bill are the same in substance as those proposed on the same subject by the bill as passed by the House except that the latter would have required the assistance to be furnished "promptly" instead of "with reasonable promptness" as proposed by your committee. The change was made in order to assure the States reasonable time to make investigations and complete any other action necessary to determine eligibility and extent of need for assistance.

* * * * * *

Page 3507:

* * * * * *

Opportunity to apply for and to receive assistance promptly

The House bill provided with respect to all categories of public assistance that all individuals wishing to make application for assistance, shall have opportunity to do so and that assistance shall be furnished promptly to all eligible individuals. The Senate amendment provided that all individuals wishing to make application for old-age assistance shall have opportunity to do so and that old-age assistance shall be furnished with reasonable promptness to all eligible individuals. The conference agreement follows the Senate amendment.

The requirement to furnish assistance "with reasonable promptness" will still permit the States sufficient time to make adequate investigations but will not permit them to establish waiting lists for individuals eligible for assistance.

* * * * * *

EXCERPTS FROM
EXHIBIT A[2] TO MEMORANDUM OF PLAINTIFFS IN OPPOSITION TO DEFENDANT'S MOTION

(House Misc. Repts. VI, H. R. No. 1260-68, 81st Cong., H. R. No. 6000, Pg. 48 and H. R. No. 1300, Pg. 148)

House Report No. 6000, Page 48:

* * * * * *

D. Opportunity to apply for and receive assistance promptly

Shortage of funds in aid to dependent children has sometimes, as in old-age assistance, resulted in a decision not to take more applications or to keep eligible families on waiting lists until enough recipients could be removed from the assistance rolls to make a place for them. As noted in the discussion of this problem in the section on old-age assistance, this difference in treatment accorded to eligible people results in undue hardship on needy persons and is inappropriate in a program financed from Federal funds. The requirement that State plans must provide opportunity to apply to all persons wishing to do so and that assistance shall be furnished promptly to all eligible families is included in the proposed amendments to title IV of the Social Security Act.

* * * * * *

House Report 1300, Page 148:

* * * * * *

Requirement relating to opportunity to apply for assistance and receive it promptly

The provisions of section 3 (a) of the Social Security Act are also amended by the bill by the addition of a new clause (9). This clause would add a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished promptly to all eligible individuals. This new requirement would take effect July 1, 1951.

The same addition has been made by sections 321 and 341 of the bill to sections 402 (a) and 1002 (a), respectively, of the Social Security Act, although in the latter case the new clause is numbered (11).

* * * * * *

EXHIBIT B[1]

Monthly Report of Employable Cases
Receiving Financial Assistance

August 1968

Program	Current month	Same month previous year	Percent change
General Public Assistance			
Number of Families Assisted	116	294	— 60.5
Average Grant per Family	$ 83,58	$ 78.63	+ 6.3
Aid to Families with Dependent Children			
Number of Families Assisted	166	361	— 54.0
Recipients involved	958	2,019	— 52.6
Average Grant per Family	$203.60	$196.46	+ 3.6
Average Grant per Recipient	$ 35.28	$ 35.13	+ .4

9/19/68

EXCERPTS FROM
EXHIBIT B[2] TO MEMORANDUM OF PLAINTIFFS IN OPPOSITION TO DEFENDANT'S MOTION

(Maryland State Department of Public Welfare, Public Assistance Rule 200, Proposed New Section)

Public Assistance Rule 200, Proposed New Section:

IX. *Referral for Work or Training* — Registration for employment and acceptance of suitable employment is a specific requirement for the receipt of AFDC where depri-

vation is due to unemployment of the father (III-D-d) and for the receipt of GPA-E (III-K-2-c). Any other member of an assistance unit determined appropriate for employment is to be referred for available employment counseling, registration or training.

The following sets forth the criteria for determining the appropriateness for referring a mother for work or training, and the requirements of the local department with regard to the Work Incentive Program (WIN).

* * * * * *

STATE DEPARTMENT OF PUBLIC WELFARE — EXHIBIT E[1]

1969 Revised Budget Request and Allowance

	Caseload or Personnel		Average Grant		Total Funds		State Funds	
	Request	Allowance	Request	Allowance	Request	Allowance	Request	Allowance
Assistance, Excl. Standards Increase:								
OAA	7,800	7,300	64.15	61.59	6,004,440	5,395,284	1,111,637	955,208
Blind	340	340	84.89	84.89	346,351	346,351	66,755	66,755
APTD	14,290	13,290	78.15	76.77	13,401,162	12,243,280	3,213,501	2,903,812
Sub-total	22,430	20,930	73.38	71.61	19,751,953	17,984,915	4,391,893	3,925,775
AFDC	118,500	110,000	39.80	38.98	56,595,600	51,453,600	23,944,500	21,046,500
Board	10,000	10,000	85.40	83.72	10,248,000	10,046,400	8,880,900	8,679,300
GPA	6,200	6,200	82.10	81.51	6,108,240	6,064,344	5,192,004	5,154,692
GPA-E	320	320	78.63	78.63	301,939	301,939	150,970	150,970
Total Assistance	157,450	147,450	49.23	48.52	93,005,732	85,851,198	42,560,267	38,957,237
Increase Standards	157,450		14.50	-0-	27,394,371	-0-	26,593,665	-0-
Local Depts.-Gen'l. Admin.	2,760	2,164			23,616,715	19,713,330	12,824,587	10,708,963
" " -Spec. Prog.	631	443			5,218,388	3,745,564	1,391,338	977,367
State Dept.-Gen'l. Admin.	215	198			2,403,033	2,204,002	1,534,300	1,416,869
" " -Spec. Prog.					2,048,199	2,048,199	-0-	-0-
Grand Total					153,686,438	113,562,293	84,904,157	52,060,436
"Increase standards" breakdown:								
Food					3,506,369		3,303,069	
Rent					9,322,181		8,783,306	
Foster Care Rates					4,529,340		4,529,340	
AFDC Clothing					7,693,020		7,693,020	
Eliminate Max. Grants					1,393,560		1,393,560	
"Living With" Factor					775,625		719,594	
OASI beneficiaries, etc.					174,276		171,776	
					27,394,371		26,593,665	

WHP:B 2-14-68

STATE DEPARTMENT OF SOCIAL SERVICES
Fiscal Year 1970 Budget

EXHIBIT E[2]

	OAA	BLIND	APTD	AFDC	FOSTER CARE	GPA	GPA-E
July 1968 Caseload	7,747	343	13,506	109,405	10,738	6,284	125
Budgeted Caseload - 1969	7,300	340	13,290	110,000	10,000	6,200	320
Projected Caseload - 1970	7,600	345	18,524	127,493	11,000	5,500	205
July 1968 Average Grant	60.70	83.22	77.06	38.38	82.35	83.33	89.13
Budgeted - 1969 Average Grant	61.59	84.89	76.77	38.98	83.72	81.51	78.63
Projected 1970 Average Grant	61.62	86.80	81.93	40.72	83.77	84.14	79.20
Budget - 1969	5,395,284	346,351	12,243,290	51,453,600	10,046,400	6,064,144	301,939
Amt. needed as of July	5,642,815	342,534	12,613,926	50,307,567	10,611,292	6,283,749	133,695
Amt. for Increased Caseload	(107,075)	1,997	4,630,418	8,330,609	250,908	(781,969)	85,565
Amt. for Increased Cost	83,904	14,821	904,712	3,580,003	187,440	53,460	(24,428)
Total	5,619,744	359,352	18,212,056	62,298,179	11,057,640	5,553,240	194,832
Increased Food Allowance	100,352	5,341	290,083	3,625,901		104,940	3,050
Increased Foster Care Rates					4,403,520		
Increased AFDC Clothing				3,276,346			
Eliminate Maximum Grants				1,116,339			
Eliminate Living With Factor	146,832	10,930	337,878	290,684		73,920	
Disregard				1,468,719			
WIN - Increased Earnings				(525,000)			
Increased Rent	520,996	24,065	1,27[illegible],644	6,550,620		442,655	14,992
Increased Utilities	416,047	19,217	1,021,074	4,049,003		353,487	11,972
Increased Public Housing	37,360	1,764	92,220	460,200		27,396	960
	6,391,831	420,869	21,223,755	87,612,976	15,461,160	6,555,638	225,806
Average Grant	75.02	101.61	95.48	57.27	117.13	99.33	91.79
State	1,460,811	146,362	3,023,029	52,398,772	12,157,464	5,670,627	112,903
Federal	4,560,000	207,000	11,114,400	33,658,152	1,748,544		
Local	321,020	67,307	2,016,257	1,555,152	1,555,152	885,011	112,903

CP

11

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STATE DEPARTMENT OF SOCIAL SERVICES
Fiscal Year 1970 Budget

EXHIBIT E[2]

	OAA	BLIND	APTD	AFDC	FOSTER CARE	GPA	GPA-E	TOTAL
oad	7,747	343	13,506	109,405	10,738	6,284	125	148,148
ad - 1969	7,300	340	13,290	110,000	10,000	6,200	320	147,450
oad - 1970	7,600	345	18,524	127,493	11,000	5,500	205	170,667
ge Grant	60.70	83.22	77.06	38.38	82.35	83.33	89.13	
Average Grant	61.59	84.89	76.77	38.98	83.72	81.51	78.63	
Average Grant	61.62	86.80	81.93	40.72	83.77	84.14	79.20	
	5,395,284	346,351	12,243,290	51,453,600	10,046,400	6,064,344	301,939	85,351,198
of July	5,642,915	342,534	12,613,926	50,337,567	10,611,292	6,283,749	133,695	86,020,678
sed Caseload	(107,075)	1,297	4,683,418	8,330,609	259,908	(781,969)	85,565	12,474,453
sed Cost	83,904	14,821	904,712	3,580,003	187,440	53,460	(24,428)	4,799,912
	5,619,744	359,352	18,212,056	62,298,179	11,057,640	5,553,240	194,832	103,295,043
Allowance	100,352	5,341	280,083	3,625,901		104,940	3,050	4,119,667
r Care Rates					4,403,520			4,403,520
Clothing				3,276,846				3,276,846
ua Grants				1,116,839				1,116,839
g With Factor	146,832	10,930	337,878	290,684		73,920		860,244
				1,463,719				1,463,719
Earnings				(525,000)				(525,000)
	520,296	24,065	1,27 ,644	6,550,620		442,655	14,992	8,832,972
ties	416,047	13,217	1,021,074	4,049,093		353,487	11,972	5,871,695
c Housing	37,360	1,764	92,220	460,200		27,396	260	620,400
	6,941,831	420,369	21,223,755	87,612,976	15,461,160	6,555,638	225,806	138,340,935
	75.02	101.61	95.48	57.27	117.13	99.33	91.79	
	1,460,811	146,362	3,023,023	52,398,772	12,157,464	5,670,627	112,903	30,040,037
	4,560,000	207,000	11,114,400	33,658,152	1,748,544			51,233,096
	321,020	67,307	2,016,257	1,555,152	1,555,152	885,011	112,903	7,012,802

CPP:ll 9-20-68

August 29, 1968

State Department of Social Services

1970 Fiscal Year Budget

1. Needed as of July, 1968 ..... $86,020.678

   Based upon caseload and average grant as of July, 1968

2. Increased Caseload 12,474,453

   Projected caseload based on two year trend in caseloads

3. Increased Cost 4,799,912

   Projected 1970 fiscal year average grant amount

4. Increased Food Allowance 4,119,667

   Based on Bureau of Labor Statistics for low cost food diet using February, 1968. Urban Retail Food Prices

   The change in the Rule Schedule would be as follows:

Size of Family	Current	Proposed	Increase
1 person	29	30	1
2 "	52	54	2
3 "	75	84	9
4 "	95	106	11
5 "	112	125	13
6 "	127	141	14
7 "	147	164	17
8 "	168	187	19
9 "	188	210	22
10 "	208	233	25
Each additional person over 10	20	23	3

5. Increased Foster Care Rates 4,403,520

Increased rates recommended by the Advisory Committee on Foster Care (1967)

Regular Care	up to 6 years	$ 69 to $ 80
	6 to 12 "	$ 75 to $105
	over 12 "	$ 89 to $125
Emergency Care		$ 85 to $115
Special Care	up to 6 years	$ 94 to $120
	6 to 12 "	$100 to $145
	over 12 "	$104 to $165
Purchase of	($ 9.00 per day)	$200 to $274
Special Care	($12.00 per day)	$200 to $365

6. Increase AFDC clothing and school supplies ..... $ 8,276,846

To place AFDC child of school age under the same standard for clothing and school supplies as currently applicable for Foster Care Children

Age 6 to 12 — Increase from $5.00 to $15.00

Age over 12 — Increase from $5.50 to $19.00

7. Eliminate living with factor: ..... $ 860,244

To eliminate the budget requirement of providing lower assistance to persons living with others as for assistance than to those persons living alone

8. Elimination of Maximum Grant ..... $ 1,116,839

To remove the current maximum grants of 250 and 240 per family. It is estimated that approximately 2537 families would be affected by removing this maximum

9. Disregard ..... $ 1,468,719

An estimated 2400 cases will have earnings in fiscal year 1970 averaging $93 per month. This will present a disregard of $51.00 per month per case.

10. Additional employed AFDC Cases .... ($ 525,000)

It is estimated that through the Work Incentive Program an additional 350 persons will be employed at an average earnings of 217/month ($50/wk).

United States District Court for the District of Maryland

STIPULATION OF FACTS

Come Now the Plaintiffs and Defendants by their undersigned attorneys and respectfully show to the Court the following agreement as to facts and issues in addition to the matters previously stipulated to in the pleadings and at oral argument:

1. On a number of occasions the Secretary of HEW has accepted for incorporation revisions of the maximum for incorporation into the approved Maryland Plan of Operation. Such incorporation is evidenced by State's Exhibit H entitled "Submittal and Report of Action On Public Assistance Plan Materials."

2. That, on the basis of State's Exhibit H, when the revisions of the maximum grant regulation were submitted to the Secretary of HEW, the Secretary never notified the state that its revisions did not conform to the requirements of the Social Security Act, Section 402 (a), 42 U.S.C. Section 602(a).

3. That the significance, if any, of the incorporation of the amendments to the Plan of Operation, as reported on

Form FS-553, is detailed in the Handbook of Public Assistance Administration issued by the Department of Health, Education and Welfare to State agencies, as Part VII, section 1100, pages 1-15 and 57-63 which are annexed hereto.

4. That the Secretary's release of October 1962 entitled "State Maximums and Other Methods of Limiting Money Payments to Recipients", evidenced by State's Exhibit F, is an informational annual release containing comparisons of different methods of limiting money payments utilized in the various states.

5. That Defendant's Exhibit D, the Interim Policy on Need-Requirements for State Public Assistance Plans, is self-explanatory, and is an implementation of Section 402 (a)(23) of the Social Security Act, as amended by the 1967 Amendments.

6. That, apart from the significance, if any, of plan amendment incorporations, the above mentioned informational release and the Interim Policy, no statement by HEW of either approval or disapproval of maximum grant regulations has come to the attention of the parties.

(Signatures omitted.)

United States District Court for the District of Maryland

SUPPLEMENTAL MEMORANDUM OF DEFENDANTS IN SUPPORT OF MOTION FOR REARGUMENT

Since argument and filing of memoranda on the Motion for Reargument, certain additional materials, difficult of obtention, relating to the validity of the challenged regulation under the Social Security Act have come to the attention of counsel. In view of the continued pendency of the Motion for Reargument, counsel for defendants deem it their obligation to bring to the attention of the Court, without further comment, the following materials

relating to the legislative history of the 1950, 1962 and 1967 amendments of the Social Security Act:

1950 Amendments (adding 42 U.S.C.A., § 602 (a) (9)) Cohen, *Factors Influencing the Content of Federal Public Welfare Legislation*, 1954 Social Welfare Forum 199, 205, 209.

1962 Amendments (adding 42 U.S.C.A., § 606 (b) (2) (B)) Public Law 87-543, § 108, U. S. Cong. & Admin. News 1962-1, at 236.

Senate Committee Report on § 108, 1962-1 U. S. Cong. & Admin. News at 1955-56.

Conference Committee Report on § 108, 1962-1 U. S. Cong. & Admin. News at 1980-81.

Cohen and Ball, The Public Welfare Amendments of 1962, 20 Public Welfare 191, at 229-30.

1967 Amendment (adding 42 U.S.C.A., § 602 (a) (23)) Hearings before the House Committee on Ways and Means. 90th Congress, 1st Session, on President's Proposals for Revision in the Social Security System, Part I, pp. 13, 18, 26-27, 59-60 (re unadopted proposal requiring full need to be met).

Conference Report on Social Security Amendments of 1967, pp. 62-63.

1967 Amendment (adding 42 U.S.C.A., § 1396 (b) (f) (1) (B) Public Law 90-248, § 220, 1967 U. S. Cong. & Admin. News 4667-69.

House Committee report on Sec. 220, pp. 118-19.

Forwarded also, for the court's convenience, are the Government Printing Office copies of the full text of the House Senate and Conference Committee reports on the 1967 amendments, together with the text of such amendments and a monograph issued by the Bureau of Family Services of the Department of Health, Education and Welfare entitled Public Assistance under the Social Security Act (1966), describing federal-state relationships and plan amendment approval procedures.

(Signatures and Certificate of Service omitted.)

EXCERPTS FROM ATTACHMENTS TO SUPPLEMENTAL MEMORANDUM OF DEFENDANTS IN SUPPORT OF MOTION FOR REARGUMENT.

From Cohen, Factors Influencing the Content of Federal Public Welfare Legislation—

page 205 *(Public Welfare Legislation):*

The Committee on Economic Security recommended that the Federal Government contribute one third of the costs of ADC (as compared with one half of the costs of OAA). There were no limitations on the amount to be paid by the Federal Government per child (as compared with $15 per month for OAA). The proposed total Federal appropriation was a closed-end appropriation of $25 million a year, and if this sum was inadequate the amount was to be prorated among the states (as compared with a closed-end appropriation of $125 million for OAA). The bill provided, among other things, that the state plan, to be approved by the Federal Government, must furnish "assistance at least great enough to provide, when added to the income of the family, a reasonable subsistence compatible with decency and health." The bill recognized that there would be waiting lists in that it provided that a state would have to file an annual statement of the number of children on the waiting list to receive assistance. The bill did not define what "assistance to children" meant.

The House Ways and Means Committee retained the one-third matching for ADC and at the same time approved the more favorable one-half matching for OAA. But the House committee wrote into the legislation (at the suggestion of Congressman Vinson who later became Chief Justice of the United States) a limitation on the Federal share of matching of $18 a month for the first child and $12 for each additional child. These figures were obtained by review of the Federal pensions provided for widows and children under veterans legislation of which the Ways and Means Committee at that time had jurisdiction. But, whereas the veterans schedule then provided $30 for two children where there was no widow and increased the amount to $46 where there was a widow, the

committee did not include any payment for the mother under ADC. It was not until 1950 — fifteen years later — that this defect was corrected.

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page 209 *(Public Welfare Legislation):*

Several amendments recommended by the Social Security Administration were enacted without any opposition or debate. Others were vigorously opposed, and some were defeated and others modified. One which was accepted without opposition was the requirement for the abolition of any waiting lists. This requirement is now in the law and is a striking development in view of the fact that the first proposal in 1935 seemed like great progress when it provided for recognizing waiting lists and getting a statistical count of the number on such lists. In my opinion, the 1950 amendment was not attributable to any program of social action developed by social workers. It probably was due to the strong feeling of "equity" in the legal mind of the lawyer members of Congress and to the belief that waiting lists could give rise to discrimination and preferences which should be avoided.

Now I shall illustrate a different process, one where Congress takes the initiative. It is the situation in which a specific amendment was written into the law by the House committee. This was the so-called "NOLEO" (notification to law enforcement officers) amendment under which the state must provide for prompt notice to appropriate law enforcement officials in any case in which aid is furnished to a child who has been deserted or abandoned by a parent. Congress then, as now, had pending before it proposals to make desertion across state lines a Federal crime, just as certain other interstate actions such as kidnaping, white slave traffic, and transporting stolen automobiles are Federal crimes. This proposal raised many serious questions as to the role of the Federal Government in family problems. The NOLEO amendment, devised by Fedele Fauri, then a staff adviser to the Committee on Ways and Means, was an attempt to find a constructive means of aiding support of families without imposing conditions on

the recipient other than need. Congress, in initiating and adopting the amendment, was responding to public opinion and at the same time attempting to work out something constructive without infringing on state rights or broadening the area of Federal control over family matters or changing the basic principles of the ADC program. * * *

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From Cohen and Ball, The Public Welfare Amendments of 1962, 20 Public Welfare 191, at 229-230—

pages 229-230 *(Public Welfare Amendments):*

Senate Finance Committee Action

At the time that H.R. 10606 passed the House, the Senate Finance Committee had scheduled early hearings on the tax revision bill and was accordingly not able to take up the welfare bill immediately. It did hold public hearings on May 14, 15, 16, and 17 and then executive sessions on June 6 and 7. The Committee made a number of amendments in the bill.

1. It concluded that the requirement that a state provide minimum services prescribed by the Secretary in order to qualify for any Federal participation under a program was too drastic a requirement and modified this to provide that if the state did not make the minimum prescribed services available, its present participation and administrative costs would be reduced by one-half, i.e., to 25 percent, but that Federal participation in assistance payments would not be affected.

2. The Committee adopted language clarifying the language in the House bill as to the relationship between state public welfare agencies and state vocational rehabilitation agencies with more explicit language as to the circumstances under which services could be provided and under which reimbursement could be made.

3. The Committee adopted the formula in the House bill for increases in payments to the aged, blind and disabled. They made the $4 increase effective on October 1, 1962, rather than on July 1, 1962. The temporary $1 in-

crease which was scheduled to expire June 30, 1962, was extended through September 30, 1962.

4. An amendment was adopted to the section on protective payments which would permit a state to use such payments for those cases, which under the state's usual standards, would have their needs met in full even though the operation of some other feature, such as a statutory maximum, prevented all recipients of ADC from having needs met in full.

5. The Committee eliminated section 107 (a) of the House bill, the one which would have permitted voucher payments and any other action authorized under state law.

6. The Committee adopted an amendment exempting payments for work on community work and training programs under title IV from Federal income tax and withholding liability.

7. The Committee deleted the provision in the House bill which would have expanded foster care under the ADC program to include Federal participation in payments for otherwise eligible children who were placed in private child-care institutions.

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President's Proposals for Revision in the Social Security system

Hearings

before the

Committee on Ways and Means

House of Representatives

Ninetieth Congress

First Session

on

H.R. 5710

March 1, 2, and 3, 1967

(page 13):

Welfare of Children

Message
from
The President of the United States
transmitting
Recommendations for the Welfare of Children

February 8, 1967. — Referred to the Committee of the Whole House on the State of the Union and order to be printed

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(page 18):

Social Security Increases for Children

Two weeks ago, I proposed legislation to bring the greatest improvement in living standards for those covered under social security since that historic act was passed in 1935.

While this program extends primarily to the older Americans, it also covers a child if the family breadwinner, who is under social security, dies, retires, or becomes disabled.

Today, more than 3 million children receive social security payments. Their average benefit is only $52 a month.

To provide more adequate payments to these children, I recommend legislation to enlarge their benefits—with an average increase of at least 15 percent.

Improving Child Assistance

Enacted during the 1930's, the "Aid to Families with Dependent Children" (AFDC) program is a major source of help for the poor child. Under AFDC, Federal financial aid is provided to States to help needy families with children under 21.

There are serious shortcomings in this program:

Only 3.2 million children received benefits last year.

Twelve million children in families below the poverty line received no benefits.

Thirty-three States do not even meet their own minimum standards for subsistence.

Seven States offer a mother and three children $120 a month or less.

Only 21 States have taken advantage of a 1962 law, expiring this year, allowing children with unemployed parents to receive financial assistance. Only 12 States have community work and training programs for unemployed parents to give them the skills needed to protect their family and earn a decent living. A number of States discourage parents from working by arbitrarily reducing welfare payments when they earn their first dollar.

To remedy these deficiencies and give the poorest children of America a fair chance, I recommend legislation to—

Require each State to raise cash payments to the level the State itself sets as the minimum for subsistence, to bring these minimum standards up to date annually, and to maintain welfare standards at not less than two-thirds the level set for medical assistance.

Provide special Federal financial assistance to help poorer States meet these new requirements.

Make permanent the program for unemployed parents, which expires this year.

Require each State receiving assistance to cooperate in making community work and training available.

Require States to permit parents to earn $50 each month, with a maximum of $150 per family, without reduction in assistance payments.

* * * * * *

(pp. 26-27)

(The Chairman) On February 20, 1967, the Chair, at the request of the administration, introduced the bill which

contains the administration proposals, H.R. 5710 in order to make it generally available to the public for study.

Without objection, there will be included at this point in the record a copy of that bill.

(The bill, H.R. 5710, follows:)

[H.R. 5710, 90th Cong., First Sess.
Introduced by Mr. Mills on February 20, 1967]

A BILL To amend the Social Security Act to provide an increase in benefits under the old-age, survivors, and disability insurance system, to provide benefits for additional categories of individuals, to provide health insurance to the disabled, to improve the public assistance program and programs relating to the welfare and health of children, to revise the income tax treatment of the aged, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Social Security Amendments of 1967".

Table of Contents

Title I — Old-age, Survivors, Disability, and Health Insurance

Part 1—Benefits Under the Old-Age, Survivors, and Disability Insurance Program

Sec. 101. Increase in old-age, survivors, and disability insurance benefits.

Sec. 102. Special Minimum Primary Insurance Amount.

Sec. 103. Maximum Amount of a Wife's or Husband's Insurance Benefit.

Sec. 104. Increase in Benefits for Certain Individuals Age 72.

Sec. 105. Widow's Benefits for Disabled Widows Under Age 62.

Sec. 106. Increase in Amount an Individual is Permitted to Earn without Suffering Full Deductions from Benefits.

Sec. 107. Increase of Earnings Counted for Benefit or Tax Purposes.

Sec. 108. Changes in Tax Schedules.

Sec. 109. Disability Insurance Trust Fund.

Sec. 110. Elimination of Provisions Denying Benefits to Individuals Because of Membership in Certain organizations.

Part 2—Coverage Under the Old-Age, Survivors, and Disability Insurance Program

Sec. 115. Coverage of Agricultural Labor.

Sec. 116. Transfer of Federal Employment Credits.

Sec. 117. Coverage of Status of Shrimpboat Fishermen and Truck Loaders and Unloaders.

Part 3—Health Insurance Benefits

Sec. 125. Health Insurance for the Disabled.

Sec. 126. Health Insurance Payments to Federal Facilities.

Sec. 127. Inclusion of Podiatrists' Services under the Supplementary Medical Insurance Program.

Sec. 128. Increase in Membership of the National Medical Review Committee.

Sec. 129. Depreciation Allowance for Purposes of Determining Reasonable Cost.

Sec. 130. Outpatient Hospital and Diagnostic Specialty Benefit for the Aged and Disabled.

Sec. 131. Elimination of Requirement of Physician Certification in the Case of Inpatient Hospital Services At Time Individual Becomes an Inpatient.

Part 4—Miscellaneous and Technical Amendments

Sec. 150. Eligibility of Certain Children for Monthly Benefits.

Sec. 151. Eligibility of an Adopted Child for Monthly Benefits.

Sec. 152. Parents' Insurance Benefits.

Sec. 153. Underpayments.

Sec. 154. Simplification of Computation of Primary Insurance Amount and Quarter of Coverage in the Case of 1937-1951 Wages.

Sec. 155. Definition of Widow, Widower, and Stepchild.

Sec. 156. Extension of Time for Filing Report of Earnings.

Sec. 157. Penalties for Failure to File Timely Reports.

Sec. 158. Limitation on Payment of Retroactive Benefits in Certain Cases.

Sec. 159. Statute of Limitations for Self-Employment Income.

Sec. 160. Enrollment under Medicare Based on an Alleged Data of Attainment of Age 65.

Sec. 161. Services of Interns and Residents As Inpatient Hospital Services.

Sec. 162. Payment for the Purchase of Durable Medical Equipment.

Sec. 163. Furnishing Consultative Services to Laboratories.

Sec. 164. Limitation on Reduction of 90 Days of Inpatient Hospital Services.

Sec. 165. Medicare Benefits to Individuals Who Die in Month of Attainment of Age 65.

Sec. 166. Report of Board of Trustees to Congress.

Sec. 167. Redesignation of Old-Age Insurance Benefits.

Title II—Public Welfare Amendments

Part 1—Public Assistance Amendments

Sec. 201. Earnings, Exemptions of Public Assistance Recipients.

Sec. 202. Requirement for Meeting Full Need.

Sec. 203. Income in Determining Eligibility.

Sec. 204. Federal Assistance in Meeting the Cost of Community Work and Training.

Sec. 205. Federal Share of Public Assistance Expenditures.

Sec. 206. Additional Federal Payments to Meet Non-Federal Share of Cash Assistance Expenditures.

Sec. 207. Temporary Assistance for Migratory Workers.

Sec. 208. Amendments Making Permanent Certain Provisions Relating to Public Assistance.

Part 2—Medical Assistance Amendments

Sec. 220. Limitation on Medical Participation in Medical Assistance.

Sec. 221. Determining Maintenance of State Effort.

Sec. 222. Coordination of Title XIX and the Supplementary Medical Insurance Program.

Sec. 223. Modification of Comparability Provision.

Sec. 224. Extent of Federal Financial Participation in Certain Administrative Expenses.

Sec. 225. Advisory Council.

Sec. 226. Free Choice by Individual Eligible for Medical Assistance.

Part 3—Child-Welfare Services Amendments

Sec. 235. Federal Share for Training Personnel.

Sec. 236. Authorization for Appropriations.

Sec. 237. Projects for Experimental and Special Types of Child-Welfare Services.

Part 4—Miscellaneous and Technical Amendments

Sec. 245. Permanent Authority to Support Demonstration Projects.

Sec. 246. Permitting Partial Payments to States.

Sec. 247. Contracts for Cooperative Research or Demonstration Projects.

Title III—Improvement of Child Health

Sec. 301. Early Case Finding and Treatment of Handicapping Conditions of Children.

Sec. 302. Dental Health of Children.

Sec. 303. Special Maternity and Infant Care Projects.

Sec. 304. Revisions of Authorization for Maternal and Child Health Services.

Sec. 305. Training for Health Care of Mothers and Children.

Sec. 306. Research in Maternal and Child Health Services and Crippled Children's Services.

Sec. 307. Program Evaluation in Maternal and Child Health and Welfare.

Sec. 308. Conforming or Technical Amendments.

Title IV—General Provisions

Sec. 401. Social Work Manpower and Training.

Sec. 402. Meaning of Secretary.

Title V—Tax Treatment of the Aged

Sec. 501. Repeal of Retirement Income Credit.

Sec. 502. Definition of Adjusted Gross and Taxable Income.

Sec. 503. Inclusion of Certain Social Security and Railroad Retirement Benefits in Income.

Sec. 504. Special Exemption for Individuals Age 65 or More; Repeal of Additional Exemption.

Sec. 505. Retirement Income Deduction.

Sec. 506. Miscellaneous Amendments.

Sec. 507. Effective Dates.

(pp. 59-60)

(b) Effective July 1, 1967, section 402(a)(7)(A) of such Act is amended to read as follows: "(A) the State agency may disregard not more than $50 per month of earned income of each dependent child and of any relative claiming aid to families with dependent children, but not in excess of $150 per month of earned income of such dependent children and relatives in the same home."

(c) Effective July 1, 1969, section 402(a)(7)(A) of such Act (as amended by subsection (b) of this section) is further amended by striking out "may disregard not more than" and inserting in lieu thereof "shall disregard".

Requirements for Meeting Full Need

Sec. 202. (a) Section 2(a)(10) of the Social Security Act is amended by striking out "and" and at the end of subparagraphs (B) and (C) and by adding after subparagraph (C) the following new subparagraph:

> "(D) provide (i), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with the standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967), and (ii), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs;"

(b) Section 402(a) of such Act is amended by striking out "and" at the end of clause (13) and by inserting before the period at the end thereof after clause (13) the following new clause "; (14) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded, or set aside for future needs, under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of individuals eligible to receive aid to families with dependent children (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967), and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs".

(c) Section 1002(a) of such Act is amended by striking out "and" at the end of clause (12) and by inserting before the period at the end thereof after clause (13) the following: "; and (14) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967), and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs".

(d) Section 1402(a) of such Act is amended by striking out "and" at the end of clause (11) and by inserting before the period at the end thereof after clause (12) the following: "; and (13) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the

standards for determining need in effect on January 1, 1967), and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs".

(e) Section 1602(a) of such Act is amended by striking out "and" at the end of paragraph (16), the period at the end of paragraph (17) and inserting "; and" in lieu thereof, and by adding after such paragraph (17) the following new paragraph:

"(18) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967) and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for updating such standards to take into account increases in living cost."

Income in Determining Eligibility

Sec. 203. (a) Section 2(a)(10)(A) of the Social Security Act is amended by inserting before the semicolon at the end thereof the following: "and (iii) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded under the plan) a basis for finding that he is not in need, if such income is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f) (1) of section 1903 in determining whether payments pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(b) Section 402(a)(7) of such Act is amended—

(1) by striking out "and" at the end of clause (B) thereof; and

(2) by inserting before the semicolon at the end thereof the following: ", and (D) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded, or set aside for future need, under the plan) a basis for finding that he (or the family) is not in need if such income is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f)(1) of section 1903 in determining whether payment pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(c) Section 1002(a)(8) of such Act is amended—

(1) by striking out "and" at the end of clause (B) thereof; and

(2) by inserting before the semicolon at the end thereof the following: ", and (D) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income that is not disregarded under the plan a basis for finding that he is not in need is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f)(1) of section 1903 in determining whether payments pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(d) Section 1402(a)(8) of such Act is amended—

(1) by striking out "and" at the end of clause (B) thereof; and

(2) by inserting before the semicolon at the end thereof the following: ", and (D) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded under the plan) a basis for finding that he is not in need if such income is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f)(1) of section 1903 in determining whether payments pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(e) Section 1602(a)(14) of such Act is amended—

(1) by striking out "and" at the end of subparagraph (C);

(2) by adding "and" at the end of subparagraph (D); and

(3) by adding after subparagraph (D) (as amended by paragraph (2) of this subsection) the following new subparagraph:

"(E) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded under the plan) a basis for finding that he is not in need if such income is less than 66⅔ percent of the amount of income established for individuals or families under subsection (f)(1) of section 1903 in determining whether payments pursuants to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

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(page 79):

Committee on Ways and Means

U. S. House of Representatives

Ninetieth Congress

First Session

Section-by-Section Analysis
And Explanation of Provisions of
H.R. 5710

The "Social Security Amendments of 1967"

As Introduced on February 20, 1967

Prepared and Furnished by
The Department of Health, Education,
and Welfare

(page 81):

Contents

Section-by-section analysis of H.R.5710:

I. Scope of the bill.

II. Summary of the provisions of the bill:

Title I—Old-age, survivors, disability, and health insurance:

Part 1—Benefits under the OASDI program.

Part 2—Coverage under the OASDI program.

Part 3—Health insurance benefits.

Part 4—Miscellaneous and technical amendments.

Title II—Public welfare amendments:

Part 1—Public assistance amendments.

Part 2—Medical assistance amendments.

Part 3—Child-welfare services amendments.

Part 4—Miscellaneous and technical amendments.

Title III—Improvement of child health.

Title IV—General provisions.

Title V—Tax treatment of the aged.

Explanation of provisions of H.R. 5710:

1. Summary of major proposals.

   Charts showing monthly social security cash benefits and contributions under present law and under proposal.

2. Cash benefit payments in calendar year 1968.
3. General benefit increase for current and future beneficiaries.
4. Special minimum benefit.
5. Liberalization of the retirement test.
6. Benefits for disabled widows.
7. Extension of health insurance protection to disabled beneficiaries.
8. Social security credit for Federal employment.
9. Broader social security coverage of farm employees.
10. Social security contributions of the self-employed.
11. Outpatient hospital and diagnostic specialty benefits.
12. Medicare payments and medical facility planning.
13. Elimination of the requirement of initial physician certification.
14. Health insurance payments to Federal facilities.
15. Coverage of podiatrists' services.
16. Increase in special payments to certain people age 72 and older.
17. Miscellaneous and technical amendments.
18. Increase in the contribution and benefit base.

19. Financing the President's proposals.
20. Adequate support for needy children.
21. Child welfare services.
22. National dental health program for children.
23. Expanded comprehensive health service programs for children in low-income areas.
24. Increased benefits for children under social security.
25. Pilots projects to find and test improved methods of meeting health needs of children.
26. Work incentive program.
27. Finding and treating health problems of needy children under medical assistance (title XIX) program.

(pages 118-119)

20. Adequate Support for Needy Children

Background

A family of four with an income of $3,100 or less is living in poverty, as defined by the Social Security Administration and the Office of Economic Opportunity. A family at this level or below is considered to be too poor to provide for its basic human needs in the United States today.

More than 3 million children in families dependent on public assistance live below the poverty level. In figuring public assistance payments, each of the 50 States makes its own definition of minimum need. Although a few States define need at or above the poverty level, no State pays as much as that amount.

Moreover, 33 States provide less support for needy children than the standards the States themselves have set as necessary to meet basic human needs. The record for these 33 States is shown in the table below, which shows actual support for needy children as a percentage of the State's own minimum standard:

States	*Percent*
Oregon, California, New Mexico, Idaho	90-99
Colorado, South Dakota, West Virginia, Ohio, Virginia, Wyoming, Washington	80-89
Kentucky, Michigan, Iowa, Utah	70-79
Georgia, Tennessee, Texas, Vermont, Louisiana, Delaware	60-69
Maine, Arkansas, Arizona, Missouri	50-59
Nevada, South Carolina, Indiana, Nebraska	40-49
Alaska, Alabama, Florida	30-39
Mississippi	20-29

In seven States — Alabama, Arkansas, Florida, Georgia, Mississippi, South Carolina, and West Virginia — a family consisting of a mother and three children receiving assistance must live on less than $120 a month.

Low levels of financial aid make it difficult or impossible for dependent families to buy the basic necessities for their children: decent food, clean, warm housing, medical care, clothing. Low levels of aid tend to keep families and children dependent.

The proposal

The President proposes legislation to require the States to meet their own standards of what is needed to support a child by July 1969.

The Social Security Act would be amended to require States to meet minimum need as each State itself defines it (see table attached) in its AFDC program.

States would also be required to bring their standards of need up to date by July 1, 1969, and to update them annually thereafter. Even though about half the States updated their minimum standards this year, most States have not been doing so annually.

The amendment would also require States to maintain their standards of need at a level not less than two-thirds of the income level set for medical assistance eligibility. That is, if a family of four is eligible for medical assistance with an income up to $3,800, for example, then the mini-

mum income standard for AFDC payments could not be less than $2,533.

Aid to families with dependent children: Percent that highest monthly amount payable for basic needs for family of specified composition and living in rented quarters represents of total monthly cost standard for basic needs of such family, by State, January 1965[1]

State	Family consisting of mother (35), boy (14), girl (9), and girl (4), and living in rented quarters[2]		
	Total monthly cost standard for basic needs	Highest monthly amount payable for basic needs[3]	Percent col. II is of col. I
	(I)	(II)	(III)
Alabama	$177.00	$ 67.26	38.0
Alaska	376.00	140.00	37.2
Arizona	232.00	134.00	57.8
Arkansas	124.00	71.00	57.3
California	229.40	215.00	93.7
Colorado	173.00	141.62	81.9
Connecticut	230.35	230.35	100.0
Delaware	214.00	149.00	69.6
District of Columbia	166.00	166.00	100.0
Florida	201.00	78.00	38.8
Georgia	181.35	109.00	60.1

[1] Includes data for 53 States; data not available for Guam.

[2] The specified type of family is assumed to need amounts for rent and utilities that are at least as large as the maximum (or other) amounts reported by the State for these items. The family is also assumed to have no income other than assistance.

[3] For the specified type of family represents the smallest of the following: (1) The amount of the State's usual legal or administrative maximum on money payments to recipients; (2) an amount resulting from the application of a percentage or flat reduction to the amount of determined need; or (3) the amount of the total cost standard for basic needs (for States with usual legal or administrative maximums above the total cost standard for basic needs and for States without such maximums).

State	Family consisting of mother (35), boy (14), girl (9), and girl (4), and living in rented quarters		
	Total monthly cost standard for basic needs	Highest monthly amount payable for basic needs	Percent col. II is of col. I
	(I)	(II)	(III)
Hawaii	197.20	197.20	100.0
Idaho	209.10	201.10	96.2
Illinois	187.36	187.36	100.0
Indiana	223.87	110.00	49.1
Iowa	253.70	190.28	75.0
Kansas	185.09	185.09	100.0
Kentucky	193.00	136.64	70.8
Louisana	164.75	108.00	65.6
Maine	222.00	124.00	55.9
Maryland	167.50	167.50	100.0
Massachusetts	221.20	221.20	100.0
Michigan	223.00	160.00	71.7
Minnesota	202.27	202.27	100.0
Mississippi	175.62	50.00	28.5
Missouri	188.95	110.00	58.2
Montana	216.75	216.75	100.0
Nebraska	261.50	130.00	49.7
Nevada	259.75	120.00	46.2
New Hampshire	183.00	183.00	100.0
New Jersey	245.80	245.80	100.0
New Mexico	195.50	185.72	95.0
New York	255.65	255.65	100.0
North Carolina	152.50	152.50	100.0
North Dakota	233.00	233.00	100.0
Ohio	165.00	142.50	86.4
Oklahoma	163.00	163.00	100.0
Oregon	198.75	185.24	93.2
Pennsylvania	163.40	163.40	100.0
Puerto Rico	82.26	27.15	33.0

State	Family consisting of mother (35), boy (14), girl (9), and girl (4), and living in rented quarters		
	Total monthly cost standard for basic needs	Highest monthly amount payable for basic needs	Percent col. II is of col. I
	(I)	(II)	(III)
Rhode Island	167.55	167.55	100.0
South Carolina	148.25	72.00	48.6
South Dakota	225.50	180.40	80.0
Tennessee	160.45	100.00	62.3
Texas	153.95	98.00	63.7
Utah	227.40	176.00	77.4
Vermont	213.65	140.00	65.5
Virgin Islands	104.00	104.00	100.0
Virginia	187.00	162.50	86.9
Washington	238.30	209.70	88.0
West Virginia	143.97	122.37	85.0
Wisconsin	225.75	225.75	100.0
Wyoming	229.80	200.00	87.0

SUPPLEMENTAL OPINION ON MOTION

WINTER, Circuit Judge:

After the filing of our opinion in this case, defendants filed a multi-faceted motion, purportedly under Rules 52(b) and 59, *Fed. R. Civ. P.*, in which they ask, alternatively, that we amend our findings of fact and judgment, grant a new trial, or receive additional evidence and alter or amend the judgment. Basically, the new or additional facts that defendants want us to consider are not in the nature of newly-discovered evidence; and no compelling excuse is offered as to why they were not previously brought to our attention.[1] Understandably, plaintiffs vigorously question

[1] The facts, themselves, are not in dispute. They were stipulated to be true in open court at the hearing on the motion; others were the subject of a post-hearing written stipulation.

defendants' right to proceed, and they cite persuasive authority in support of their position.

The case is an important one. Proof has been offered to establish that twenty-seven states have maximum grant regulations similar to that of Maryland; other litigation questioning their validity is pending in other courts. In an effort to arrive at a correct decision, we should give full and complete consideration to all relevant materials. We prefer, therefore, to deal with the motion on its facts and the merits of the contentions it presents, rather than on the procedural grounds urged by the plaintiffs.

As will appear from what is said hereafter, the motion is granted in part and denied in part.

I.

In regard to the question of the proper construction to be placed on the Social Security Act of 1935, as amended, and whether the Maryland maximum grant regulation conflicts therewith, defendants point out that Maryland has had a maximum grant regulation in some form continuously since January 1, 1947. It is asserted that the Secretary of Health, Education and Welfare (HEW) has "approved" the Maryland regulation, as well as its counterpart in some twenty-seven other states, and that this "approval" is entitled to great weight, if, indeed, it is not conclusive, in deciding whether the regulation conflicts with any provision of the Act. The text of the maximum grant regulations in other states is not before us; nor is any evidence of how they are applied. Finally, it is contended that the legislative history of clause 9 of § 402[2] indicates that it has a more restrictive

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[2] Clause 9 is the portion of § 402, 42 U.S.C.A. § 602, which requires that a State AFDC plan *must* include a provision:

> "(9) * * * effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals * * *."

Since the 1968 amendments, clause 9 has become clause 10 of § 402 .

meaning than the one we ascribed to it, so that there is no conflict between it and the regulation.

We accept the correction that the Maryland maximum grant regulation is not new and that it has its counterpart elsewhere. We find that HEW has never expressly disapproved the regulation; whether it has approved it is another matter, as is the legal effect of what has been done. We state first, drawing on the parties' stipulation, what HEW has and has not done.

HEW has at no time issued any regulations dealing specifically with the problem of maximum grant regulations, nor has it circulated any reasoned decisions or statements detailing its position. Indeed, there is no indication whatever that any of the arguments urged in this proceeding or adopted in our previous opinion have been presented to HEW. The sole contacts which HEW has had with the regulation in issue, so far as we are informed by the parties, are as follows: (1) at various times HEW has "incorporated" revisions of the maximum grant regulation into Maryland's previously approved AFDC plan; (2) HEW issued, in October, 1962, a booklet entitled "State Maximums and Other Methods of Limiting Money Payments to Recipients," which details, *inter alia*, the AFDC maximum grants in the respective states employing such regulations; (3) an Interim Policy Statement of May 31, 1968, specifies that a state AFDC plan must provide by July 1, 1969, for increases in any maximum grants in order to reflect changes in living costs.

From the foregoing, we distill the obvious, namely, that HEW implicity considers maximum grant regulations not to be violative of the Act. In view of the fact, however, that there is no indication from administrative decision, promulgated regulation, or departmental statement that the question of the conformity of maximum grants to the Act has been given considered treatment,[3] we believe that

[3] Some corroboration for this statement is found in the implicit assumption in the discussion of maximum family grants, Note, *Welfare's "Condition X,"* 76 Yale L. J. 1222, 1232-33 (1967).

the various actions and inactions on the part of HEW are not entitled to substantial, much less to decisive, weight in our consideration of the instant case.

In adopting this view, we cast no doubt whatsoever upon the general doctrine that the views of administrative agencies entrusted with the administration of a statute are to be given due deference when issues of statutory interpretation arise. See, generally, Annot., *Administrative or Practical Construction of Statute as Precedent for Judicial Construction*, 84 L. Ed. 28 (1939). Nevertheless, whether administrative interpretation in the abstract is deemed to be "pertinent," to have "weight," to have "persuasive weight," or to be of such significance that it "ought not to be overruled without cogent reasons," *Anderson v. McKay*, 211 F. 2d 798, 805 (D.C. Cir.), *cert. den.*, 348 U.S. 836 (1954), the attitudes, practices and interpretations of an administrative agency are certainly not absolute rules of law but, at best, merely "helpful guides to aid courts in their task of statutory construction." *Sims v. United States*, 252 F. 2d 434, 438 (4 Cir. 1958), *aff'd*, 359 U.S. 108 (1959). The ultimate authorities on issues of statutory interpretations are the courts, *Volkswagenwerk v. FMC*, 390 U.S. 261, 272 (1968), which have the final responsibility to declare what a statute means. *Fishgold v. Sullivan Drydock & Repair Corp.*, 154 F. 2d 785, 790 (2 Cir.) (L. Hand, J.), *aff'd*, 328 U.S. 275 (1946). To the same effect, see, *e.g.*, *Folsom v. Pearsall*, 245 F. 2d 562, 564-65 (9 Cir. 1957); *Commissioner v. Winslow*, 113 F. 2d 418, 423 (1 Cir. 1940). Where a conflict arises between the administrative and judicial constructions of a statute, the latter will necessarily prevail. *Deeg v. Lumbermen's Mut. Cas. Co.*, 279 F. 2d 491, 494 (10 Cir. 1960); *Cory Corp. v. Sauber*, 266 F. 2d 58, 61 (7 Cir. 1959), *rev'd on other grounds*, 363 U.S. 709 (1960); *Louisiana Pub. Serv. Comm'n v. SEC*, 235 F. 2d 167, 172 (5 Cir. 1956), *rev'd on other grounds*, 353 U.S. 368 (1957); Woods *v. Benson Hotel Corp.*, 177 F. 2d 543, 546 (8 Cir. 1949). See, 1 Davis, *Administrative Law Treatise*, § 5.06, at 326-328 (1958). In determining the proper weight to be accorded to an administrative decision, account must be taken of the consistency of the agency's interpretation with the under-

lying purposes of the statute which is being construed. *P. Lorillard Co. v. FTC*, 267 F. 2d 439, 443 (3 Cir.), *cert. den.*, 361 U.S. 923 (1959). In no event is a court "compelled to follow an administrative interpretation that it regards as inconsistent with the legislative purpose of the provision in issue." *In re Petition of Chin Thloot Har Wong*, 224 F. Supp. 155, 165 (S.D. N.Y. 1963).

Furthermore, it is clear that the thoroughness with which an administrative agency has dealt with a particular problem of statutory construction is a highly relevant factor in determining the weight to be assigned to the agency's resolution of the matter. Such weight will be dependent upon "the thoroughness evident in * * * [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). If the agency's construcion has resulted from an uncontested non-adversary proceeding, it has been said that the agency's interpretation is entitled to "relatively little weight." *SEC v. Sterling Precision Corp.*, 393 F. 2d 214, 220 (2 Cir. 1968). See, *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 290 (1946). Finally, to the argument that Congress has not stepped in to alter or amend HEW's apparent interpretation that Maryland's maximum grant regulation conforms to the Act, we are reminded of our Court of Appeals' admonition that "courts are properly chary of equating mere inaction with approval, in the absence of a solid foundation for the inference of conscious ratification [by Congress]." *Duncan v. Railroad Retirement Bd.*, 375 F. 2d 915, 919 (4 Cir. 1967).

If the unequivocal command that "aid * * * shall be furnished with reasonable promptness to *all* eligible individuals," were all that we must consider, we would not be disposed, in the light of the legal principles which we have set forth and of the limited nature of the administrative action taken by HEW in regard to maximum grant regulations, to assign controlling significance to HEW's apparent views. To the extent that these views hold that maximum grant regulations are consistent with the language and

purposes of the Act, we would decline to follow them. See, *King v. Smith*, 392 U.S. 309, 333, n. 34 (1968).

We turn to the argument that the legislative history of clause 9 demonstrates that it has a more restricted meaning than we have given it. Essentially, defendants' argument is that the portion of the Social Security Act Amendments of 1950, 64 Stat. 549, which added clause 9, on which we placed principal reliance in concluding that there was a conflict between the regulations and the Act, was addressed to a practice in Maryland and in other states of dealing with revenue crises in AFDC by instituting a freeze on the receipt of new AFDC applications, rather than to devise some other uniform or equitable way of reducing AFDC expenditures. The requirement of clause 9 — "that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so" — was, so the argument runs, specifically directed to this practice. The "all eligible individuals" to whom aid must be furnished, the argument continues, are the applicants for aid referred to in the beginning of clause 9, and not the family members benefited by the application.

We reject defendants' second argument for the reasons set forth in footnote 9 of our original opinion. Although clause 9 may contemplate that the application for aid be made by a responsible adult, child-care institution, child-placement or child-care agency, it requires that the amount of aid granted be commensurate with the needs of all of those on behalf of whom an application is made. Defendants' argument is essentially that the command of the entire clause is met if the applicant, i.e., the responsible adult, is furnished some aid, even though the amount is less than that which the state has determined is the extent of need and appropriate benefit for the members of his family. If his needs as an individual are satisfied in whole or in part, the clause requires no more. The basic purpose of AFDC to provide support for "dependent children" makes the hollowness of this argument manifest.

We see nothing inconsistent between the claimed legislative intent as expressed in clause 9 and the liberal meaning

we have given it. If the evil to be corrected was the states' freezing consideration of new applications for aid, it would not be unreasonable for Congress to say that the application should be received, and considered, and that the amount of aid should be granted promptly to *all* who were eligible, lest some state devise some other subterfuge, such as receiving an application and considering it but postponing any benefits thereon or granting less than the benefits indicated thereon until it was financially more convenient to do so.

More importantly, closer scrutiny of the legislative materials relevant to the purposes of clause 9 satisfies us that we have not expanded its meaning beyond the initial legislative intent in its enactment. The basic purpose of clause 9 was explained in the report of the House of Representatives where the bill, H.R. 6000, which added clause 9, originated.[4] H.R. 6000 was not reported by the Senate until the following session, and, while the House version required

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[4] The pertinent sections of the report read:

"D. Opportunity to apply for and receive assistance promptly

Shortage of funds in aid to dependent children has sometimes, as in old-age assistance, resulted in a decision not to take more applications or to keep eligible families on waiting lists until enough recipients could be removed from the assistance rolls to make a place for them. As noted in the discussion of this problem in the section on old-age assistance, this difference in treatment accorded to eligible people results in undue hardship on needy persons and is inappropriate in a program financed from Federal funds. The requirement that State plans must provide opportunity to apply to all persons wishing to do so and that assistance shall be furnished promptly to all eligible families is included in the proposed amendments to title IV of the Social Security Act."

* * * * * *

"Requirement relating to opportunity to apply for assistance and receive it promptly

The provisions of section 3(a) of the Social Security Act are also amended by the bill by the addition of a new clause (9). This clause would add a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished promptly to all eligible individuals. This new requirement would take effect July 1, 1951."

H. R. Rep. No. 1300, 81st Cong., 1st Sess., pp. 48, 148 (1949).

a state to furnish aid "promptly," clause 9 was amended in the Senate to require a state to furnish aid "with reasonable promptness." This substitution in phraseology was thought to assure that a state would have sufficient time to make investigations. It was the only amendment; otherwise, the Senate sought to achieve the same objectives as the House.[5] It should be stressed that H.R. 6000 also expanded AFDC (which was theretofore a program solely of aid to children) to include the relative with whom any dependent child is living. The purpose of the expansion was described in the report of the House Committee.[6] The essential emphasis,

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[5] "Title III — Amendments to Public Assistance and Maternal and Child Welfare Provisions of the Social Security Act

Requirements of State Plans

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Requirements relating to opportunity to apply for and receive assistance

The provisions of section 3(a) of the Social Security Act are also amended by the bill by the addition of a new clause (9). This clause would add a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished with reasonable promptness to all eligible individuals. This new requirement would take effect July 1, 1951.

The same addition has been made by sections 321 and 341 of the bill to sections 402(a) and 1002(a), respectively, of the Social Security Act, although in the latter case the new clause is numbered (11).

These amendments proposed by the bill are the same in substance as those proposed on the same subject by the bill as passed by the House except that the latter would have required the assistance to be furnished 'promptly' instead of 'with reasonable promptness' as proposed by your committee. The change was made in order to assure the States reasonable time to make investigations and complete any other action necessary to determine eligibility and extent of need for assistance."

S. Rep. No. 1669, 81st Cong., 2nd Sess.; 2 U. S. Code Cong. Ser. 3470-71 (1950).

[6] "XIV. Aid to Dependent Children

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"A. Inclusion of mother or other relative caring for child

In the present law, aid to dependent children is defined as payments with respect to a dependent child. No specific provi-

in this statement, on the needs of the dependent children, and the concept that aid to the relative with whom the children were living was necessary *so as not to diminish the realizable benefit to the children* belies the interpretation of clause 9 pressed by defendants.

Inexplicably, however, Congress, in the Social Security Amendments of 1967, P. L. 90-248, 81 Stat. 821, amended § 402 of the Act in a manner which may have a substantial effect on the apparent conflict between the regulation and the Act. The record, however, is insufficient for us to express any final conclusion.

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sion is made for the need of the parent or other relative with whom the child is living. Particularly in families with small children, it is necessary for the mother or another adult to be in the home full time to provide proper care and supervision. Since the person caring for the child must have food, clothing, and other essentials, amounts allotted to the children must be used in part for this purpose if no other provision is made to meet her needs. The maximum monthly amount of assistance in which the Federal Government will now share is $27 for one child in a family and $18 for each child beyond the first.

Because of the lack of specific provision for Federal participation in assistance to the mother or other relative and the inadequacy of the $27 and $18 maximums to cover the cost of essentials for the children and an adult as well, States have been forced to make a very large proportion of payments larger than the maximum amounts subject to Federal sharing. In December 1948 about one-half of all payments were above the maximums. More than three-fourths of all payments exceeded these amounts in 24 States. Often States have been unable to make payments that were at all realistically related to the need of the dependent children and the relative caring for them.

To correct the present anomalous situation wherein no provision is made for the adult relative and to enable States to make payments that are more nearly adequate, the bill would include the relative with whom the dependent child is living as a recipient for Federal matching purposes. The maximum amount of assistance for a relative in which the Federal Government would share would be $27. The maximums of $27 for one child in a family, and $18 for each additional child, would remain unchanged. Thus, for a relative and one dependent child the maximum amount of the payment subject to Federal sharing would be $54 instead of $27. For a three-child family, the maximum would be $90 instead of $63."

H. R. Rep. No. 1300, 81st Cong., 1st Sess., pp. 45-46 (1949).

The amendment, contained in § 213(b) of the Act, cited as Social Security Amendments of 1967, added a new clause to § 402(a), to be known as clause 23, which requires, as an additional condition, that a state AFDC plan must:

> "provide by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, *and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.*" (Emphasis supplied.)

Section 213(a) amended various other sections of the original Act to provide that recipients under various programs need not suffer a reduction in benefits if they had income up to $7.50 per month, instead of the previous ceiling of $5.00 per month, i.e., 42 U.S.C.A. §§ 302(a)(1)(A)(i) [state old-age and medical assistance plans], § 1202(a)(8)(C) [state plans for aid to blind], § 1352(a)(8)(A) [state plans for the permanently and totally disabled], and § 1384(a)(14)(D) [state plans for aid to aged, blind or disabled or for such aid and medical assistance for aged].

Section 213 of the amending Act was added to the House Bill by amendment in the Senate, later concurred in by the House.[7] As it shows on its face, § 213(b) was designed to increase benefits to keep pace with increased living costs. The references to it in the committee reports are no more informative.[8] Elsewhere in the extensive amendments to

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[7] See discussion in Conference Report No. 1030, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 3179, 3208 (1967).

[8] Clause 23 was added by § 213(b) of the amending Act. As passed by the Senate, the amending Act added clause 23 by § 213(a) and referred to clause 23 as clause 24. In the Senate Report, the following was said:

> "Paragraph (5) of section 213(a) of the bill amends section 402(a) of the Act by adding (after the new clause (23) added to such sec. 402(a) of the act by sec. 211(a) of the bill) a new clause (24) which requires a State plan for the dependent children program to provide that by July 1, 1969, and at least annually thereafter, the amounts used by the State to determine the

the original Act, benefits were increased generally,[9] the conditions attaching to AFDC benefits were liberalized to encourage AFDC recipients to make the transition to becoming self-supporting, and new protections to children in AFDC families and provisions to make more certain the fulfillment of parental responsibilities were added.[10]

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needs of individuals will be adjusted to reflect fully changes in living costs since such amounts were established, and that any maximums that the State imposes on the amount of aid paid to families will be proportionately adjusted."

Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. § 133 (1967).

The Conference Report which recommended concurrence in the Senate amendment contained no discussion of its purpose or need, beyond the barest description of its terms. Conference Report No. 1030, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. § 209 (1967).

[9] See, *e.g.*, Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 2834, 2835 [old-age, survivors, and disability insurance], 2836 [health insurance], 2838 [public assistance].

[10] Senate Report No. 744, op. cit. n. 8. At p. 2837, the general program in this report was thus summarized:

"Aid To Families With Dependent Children

The bill would make the following reforms in the aid to families with dependent children programs:

(1) For the purpose of providing greater incentives for appropriate members of families drawing aid to families with dependent children (AFDC) payments to obtain employment so that they need no longer be dependent on the welfare rolls the bill would—

(a) exempt a portion of earned income for members of the family who can work;

(b) establish a new work incentive and training program for individuals to be administered by the Department of Labor upon referral by the State welfare agency;

(c) require State welfare agencies to assure adequate child care arrangements for the children of working mothers;

(d) require the State welfare agencies to establish a social service plan for each AFDC family; and

(e) modify the optional unemployed fathers program to provide for a uniform definition of unemployment throughout the United States.

In order to enable the States to implement these requirements, the Federal Government would supply Federal matching for services (including child welfare and day care) which the States

In the context in which clause 23 was added, that is to say, having regard to the overall amendments to the AFDC program made by the amending Act, we find it difficult to say that §213(b) represented a considered judgment by Congress that it wished to validate all maximum grant regulations and that it wished to depart from the basic

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would be required to furnish. Federal matching would also be provided for training, supervision, materials, and other items and services needed in the work incentive program."

The provisions of existing law and proposed changes to liberalize the earnings exemptions of dependent children are described at p. 2861.

The overall changes in the AFDC program are summarized at pp. 2982-83, as follows:

"The plan which the committee has developed, with the advice and help of the Department of Health, Education, and Welfare and the Department of Labor amounts to a new direction for AFDC legislation. It follows that the basic outline of the bill passed by the House but incorporates certain desirable changes in the method of administration and program emphasis. The committee is recommending the enactment of a series of amendments to carry out its intent of reducing the AFDC rolls by restoring more families to employment and self-reliance.

The first series of amendments is designed to encourage and make possible the employment of adults in AFDC families. Three provisions are aimed at this purpose:

(1) the establishment of a work incentive program under the Department of Labor for the purpose of restoring members of AFDC families (including those with little or no work experience) to regular employment through counseling, placement services and training, and arranging for all others to get paid employment in special work projects to improve the communities in which they live;

(2) A requirement that all States furnish day-care services and other social services to make it possible for adult members of the family to take advantage of the work and training opportunities under the work incentive program; and

(3) A requirement that all States exempt part of the AFDC recipient's earnings to provide incentives for work in regular employment.

The second series of amendments would set up new protection for the children in AFDC families and would make more certain the fulfillment of parental responsibilities:

(1) A requirement that the States establish a comprehensive plan of social services for each AFDC child to assure

objectives of prior Congresses, reaffirmed by it, that benefits under AFDC be granted to *all* eligible individuals and that to the maximum extent feasible for their interest dependent children be kept in their own family units.[11] The brevity of the discussion of §213(b) in the legislative reports, as compared to the considered treatment of other amendments, leads to the reasonable assumption that Congress gave no real thought to the effect of maximum grant

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the child the maximum opportunity to become a productive and useful citizen;

(2) A requirement that State welfare agencies refer cases of child abuse or neglect to appropriate law-enforcement agencies and courts;

(3) A requirement that protective payments and vendor payments be made where appropriate to protect the welfare of the children;

(4) Federal payments for additional foster care situations under the AFDC program;

(5) A requirement to assure that fathers who desert or abandon their families will contribute to the support of their families by using available tax records and the enforcement power of the Internal Revenue Service. In addition, there would be a requirement that the States establish separate units to enforce the child-support laws, including financial help to the courts and prosecuting agencies to enforce court orders for support; and

(6) A program of emergency assistance to families with minor children for a temporary period.

(7) A more definitive and uniform program for the children of unemployed fathers.

The third series of amendments would make other changes in the program designed to deal with the expanding AFDC rolls.

(1) A requirement that all States establish programs to reduce the number of children born out of wedlock; and

(2) A requirement that all States offer family planning services to appropriate AFDC recipients."

[11] As part of the amending Act, Congress also amended § 401, 42 U.S.C.A. §601, in a technical respect not itself significant here. What is significant is that an amendment was made to the section containing the recital that a purpose of AFDC was "to help maintain and strengthen family life" without any alteration thereof. Presumably, family life is stengthened and maintained by holding a family together. Yet, as has been previously shown, the Maryland maximum grant regulation in its operation encourages the very opposite.

regulations in its oft-expressed basic legislative purposes, but simply concluded that if it was increasing benefits generally it should include a direction that maximum grants should be increased, also. Yet, clause 23 is unmistakable recognition by Congress that some states have maximum grant regulations, and, utilizing accepted canons of statutory construction, we are bound to give effect to this recognition.

The problem is what is the scope of Congressional recognition and implied approval of maximum grant regulations. The language of Congress in clause 23 is general and the Congressional intent expressed therein is uncertain. Manifestly, it cannot validate that which the Constitution does not permit. Equally important, it must be construed in the light of all other provisions of the Social Security Act, as amended, so as to achieve an harmonious whole. Even if clause 23 is treated as an implied amendment of clause 9, we do not know, and the parties have offered no proof to show us, what are the terms and provisions of the maximum grant regulations of other states and how they are applied. To be specific, we do not know if they are similar and are uniformly applied like that of Maryland to encourage the disbanding of large families so that Congressional recognition may be deemed an amendment of §402 of the Act, as well as a departure from the original legislative intent of clause 9 and the underlying purposes of the AFDC program to strengthen family life.

In short, clause 23 may well be properly construed to imply recognition by Congress of the concept of maximum grant regulations in the abstract without the additional implication that a congressional imprimatur has been placed upon every conceivable maximum grant regulation, no matter what its operative effects may be in furthering or retarding basic congressional policy. Thus, while Congress has indicated its view that a maximum grant regulation is not *per se* in conflict with the Act, prior to the 1967 amendments, as we have construed it, we cannot, on the present record, impute to Congress the intention to endorse specifically the Maryland regulation with its pernicious results, absent a statement of endorsement or cir-

cumstances of endorsement which speak with unmistakable clarity. In other circumstances, we would direct the parties to present additional proof to enable us to resolve this issue. We do not find this necessary in the instant case, however, because we are still satisfied that the regulation cannot hurdle the constitutional barrier of the equal protection clause.

II.

In regard to the question of whether Maryland's maximum grant regulation denies equal protection of the law, the evidence before us at the original trial was crystal-clear that the only reason why the maximum grant regulation was continued was financial, i.e., that the Governor and General Assembly of Maryland had failed to appropriate sufficient funds to finance the cost of AFDC, absent the operative effect of the maximum grant regulation in reducing expenditures. Now defendants assert that, at least initially, the maximum grant regulation was rationally supportable for constitutional purposes on the basis of the so-called "principle of less benefit." The thrust of the principle in the case at bar is that public assistance or welfare programs should not serve as an inducement to individuals to abandon useful employment, or to decline useful employment, or to abandon their families and the obligation to support them. Accordingly, the benefits derivable from such assistance should, in no event, be greater than the remuneration which could be achieved from gainful employment. In order to achieve this result, so the argument runs, the maximum grant is keyed to the minimum wage, so that an individual family receiving assistance would obtain no more than a family in which one member thereof was employed at the minimum wage level.

Specifically, under the principle of "less benefit," defendants assert that the maximum grant regulation serves a rational function in that it (a) discourages desertion of children by the wage earner or the wage earners of the family, (b) it provides an inducement to a surviving parent to seek employment, and (c) it encourages parents to limit the sizes of their families.

Even if we assume that the maximum grant regulation was adopted for the purposes that defendants assert,[12] and even if we accept the contention that the validity of the regulation under the equal protection clause may be saved by the original purposes for its promulgation, notwithstanding that those are not the purposes for its continuance, we find no merit in the argument that the less benefit principle may validate this regulation. We reach this conclusion because the regulation on its face is not limited to any subcategories of AFDC eligibles, but purports to apply, and is applied, to AFDC eligibles as a group. While the purposes which defendants assert may have a logical connection with one or more subcategories of AFDC eligibles, alone or in combination, they have no logical connection with the group as a whole; hence, the regulation is invalid on its face for overreaching. We turn to a consideration of the claimed rational functions which defendants assert.

AFDC is not limited to dependent children or families with dependent children deprived of parental support or care by reason of continued absence from the home. Discouragement of desertion as a rational basis for the maximum grant regulation can have application only to the continued absence subcategory of AFDC; it can have no application to dependency which arises because of death, unemployment, or physical or mental incapacity of the wage earner. The named plaintiffs Junius Gary and Jeanette Gary are examples of eligibles to whom this purpose has no logical application. Even when eligibility for AFDC is predicated upon continued absence from the home, dependent children and families with dependent children may still receive payments in excess of the maximum grant, if those children in number in excess of the cut-off point are placed with other relatives, a child-care institution, a child-placement or a child-care agency. A parent

[12] On the evidence before us the conclusion is equally tenable that the maximum grant regulation was adopted to make the entire AFDC program more palatable politically. Perhaps those purposes were inspired, however, by unarticulated notions of the "principle of less benefit."

who is willing to desert to give his children or his family eligibility for AFDC on this basis can hardly be presumed to voice stringent objection to further breakup of the family unit to gain advantage from this unusual aspect of the Maryland regulation. Thus, the maximum grant regulation not only subverts the statutory goal of preserving intact the family unit, but it is also ineffective to discourage eligibility by continued absence from the home.

The same is true with regard to the claimed purpose of inducing a surviving parent to seek employment, namely, that it is inapplicable to inability to work or lack of employment and is ineffective to achieve its purpose even in the subcategory to which it might be efficacious. Other considerations also come into play. The basic purpose of AFDC is to aid needy *children*, and to achieve this schedules of need based upon the cost-of-living have been established by the state. The principle of "less benefit" can have no application to those under the age when the state will permit them to work.[13] The evidence indicates that only a relatively small percenage of families (166 out of 2,537, or 6.5%) receiving AFDC payments are classified as having employable numbers. To what percentage of the 6.5% of total AFDC beneficiaries the maximum grant regulation is applicable is not disclosed. The evidence does show that the plaintiffs Junius Gary and Jeanette Gary, his wife, are receiving AFDC payments because of sickness and disability, and neither they nor the named plaintiff Linda Williams are employable. It is simply irrelevant to apply the "less benefit" principle of encouraging employment to individuals who could not, in any event, be gainfully employed.

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[13] Like every enlightened jurisdiction, Maryland regulates the employment of minors. Those under 14 are prohibited from engaging in any gainful employment. Those over 14 but under 16 may not be employed during school hours, with certain exceptions, or in certain occupations. All minors under 18 are prohibited from engaging in certain occupations and females over 16 but under 18 from engaging in certain occupations permissible for males. See, generally, 8B Ann. Code of Md., Art. 100, §§ 4, *et seq.*

These ages should be compared to the age limitations to qualify one as a "dependent child," i.e., under the age of 18, or, in the case of a student, under the age of 21. 42 U.S.C.A. § 606.

The state may have a legitimate interest in reducing its welfare rolls by encouraging those capable of so doing to seek and maintain gainful employment, but this goal can be furthered by such devices as work incentive programs, which are aimed precisely at aiding and encouraging those who are in fact employable,[14] or by limiting the application of the regulation to those to whom it may be said to have some logical relation.

Defendants' contention that the maximum grant regulation was also initially promulgated to encourage parents to limit the sizes of their families is diffidently pressed. This asserted purpose merits little discussion. If, indeed, this is a purpose, the regulation, again, invalidly overreaches. It is not limited to children born after AFDC eligibility is established and, from the evidence, it appears that in the case of the named plaintiffs at bar no children

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[14] We call attention to the provisions of § 407 of the Act, 42 U.S.C.A. § 607, which, beginning in 1961, expanded the definition of "dependent child" to include needy children deprived of parental support or care by reason of the unemployment of a parent. This section requires as part of the state's AFDC plan, in addition to the other conditions of §402 of the Act, that the state provide such assurances as will satisfy HEW that fathers of dependent children will be referred to the Secretary of Labor for participation under a work incentive program, and for providing vocational education to encourage the retraining of individuals capable of being retrained. Moreover, the state is permitted to deny AFDC to any child or eligible relative "if, and for so long as, such child's father is not currently registered with the public employment offices in the state * * *." § 407(b)(2)(C)(i).

It is significant that the 1968 Amendments in expanding the work incentive program also limited its application to "unemployed fathers" rather than "unemployed parents." The legislative history of the 1968 Amendments makes clear that the new work incentive program which they established was not intended to apply to "a mother who is in fact caring for one or more children of preschool age, if such mother's presence in the home is necessary and in the best interest of the children." Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 2859, 2984 (1967). Plaintiff, Linda Williams is literally within that category. Thus, there is legislative recognition that the principle of less benefit was not intended to apply to her and others similarly situated.

have been born after the circumstances to produce AFDC eligibility occurred.[15]

Thus, in the case of the named plaintiffs at bar, it appears that the claimed purposes of the maximum grant regulation are either totally inapplicable or patently ineffective to accomplish their objectives, and consideration of the several bases of eligibility for AFDC within the group on whose behalf the named plaintiffs sue, indicates that the same is true of other categories, the substantiality of which is not disclosed. Because it cuts too broad a swath on an indiscriminate basis as applied to the entire group of AFDC eligibles to which it purports to apply, the maximum grant regulation cannot be sustained under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

III.

We modify our previous opinion to the extent that we do not decide whether Maryland's maximum grant regulation conflicts with the Act, as amended. On the constitutional basis of our prior decision, however, we find no reason to reach a result different from that previously announced. We reiterate our previous conclusion that Maryland's maximum grant regulation transgresses the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

The Clerk is directed to enter a short order on the docket, granting in part, and denying in part, defendants' motion, as set forth in this opinion. In accordance with our previous instructions, plaintiffs have submitted a proposed form of decree. Defendants shall present their com-

[15] The objective of family planning is part of the Act and treated with greater specificity and logic therein. By the 1968 Amendments, § 402 of the Act, 42 U.S.C.A. § 602, now requires, as part of the state's AFDC plan, that the state develop a program to achieve the objective of "preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life," and for implementing this program by assuring that "in all appropriate cases family planning services are offered to them [applicants for AFDC] * * *." § 402(a)(15) of the Act, 42 U.S.C.A. § 602(a)(15).

ments thereon, and, if they be so advised, their suggested form of decree, within five days.

/s/ HARRISON L. WINTER,
United States Circuit Judge.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court
for the District of Maryland.

/s/ ALEXANDER HARVEY, II,
United States District Judge.

ORDER

In accordance with the opinions of the United States District Court for the District of Maryland dated December 13, 1968, and February 25, 1969, and the Court being of the view that from the facts and for the reasons stated therein plaintiffs are suffering and will suffer irreparable injury unless defendants are permanently restrained from enforcing the maximum grant regulations described therein.

It is hereby ORDERED, by the United States District Court for the District of Maryland, this 18th day of March, 1969, that the defendants be and they are hereby permanently enjoined from enforcing the maximum grant regulation applicable to all AFDC recipients generally set forth in the Maryland Manual of the Department of Social Services, Part II, Rule 200, Section VII, 1, against the plaintiffs named in this action and the class represented; provided that the effectiveness of this Order is stayed for a period of forty-five days.

/s/ HARRISON L. WINTER,
United States Circuit Judge.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court.

/s/ ALEXANDER HARVEY, II,
United States District Judge.

Supreme Court of the United States

No. 131 ---, *October Term, 19* 69

Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare, et al.,

Appellants,

v.

Linda Williams et al.

UPON CONSIDERATION of the motion of the appellees for leave to proceed in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 13, 1969

Supreme Court of the United States

No. 131 --- , *October Term, 19* 69

Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare, et al.,

Appellants,

v.

Linda Williams et al.

APPEAL from the United States District Court for the District of Maryland.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar. This case is set for oral argument with No. 540 in which certiorari was granted today.

October 13, 1969

Supreme Court of the United States

No. 131 ---- , *October Term, 19* 69

Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare, et al.,

Appellants,

v.

Linda Williams, et al.

APPEAL from the United States District Court for the District of Maryland.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

October 13, 1969

as amended by order of October 20, 1969